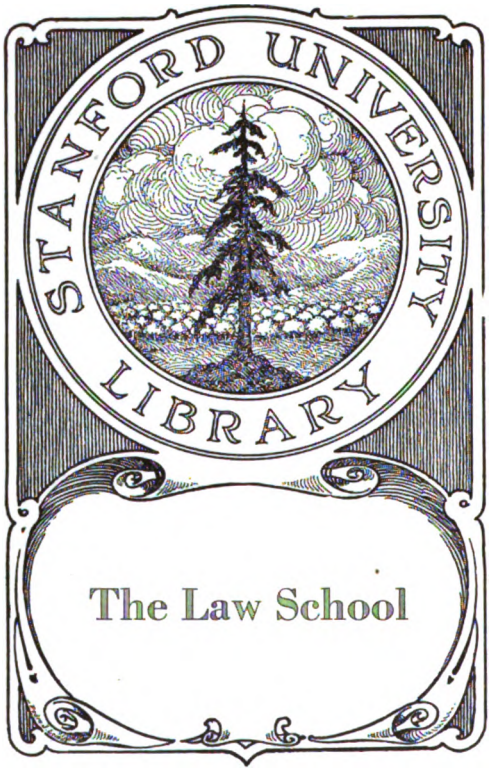
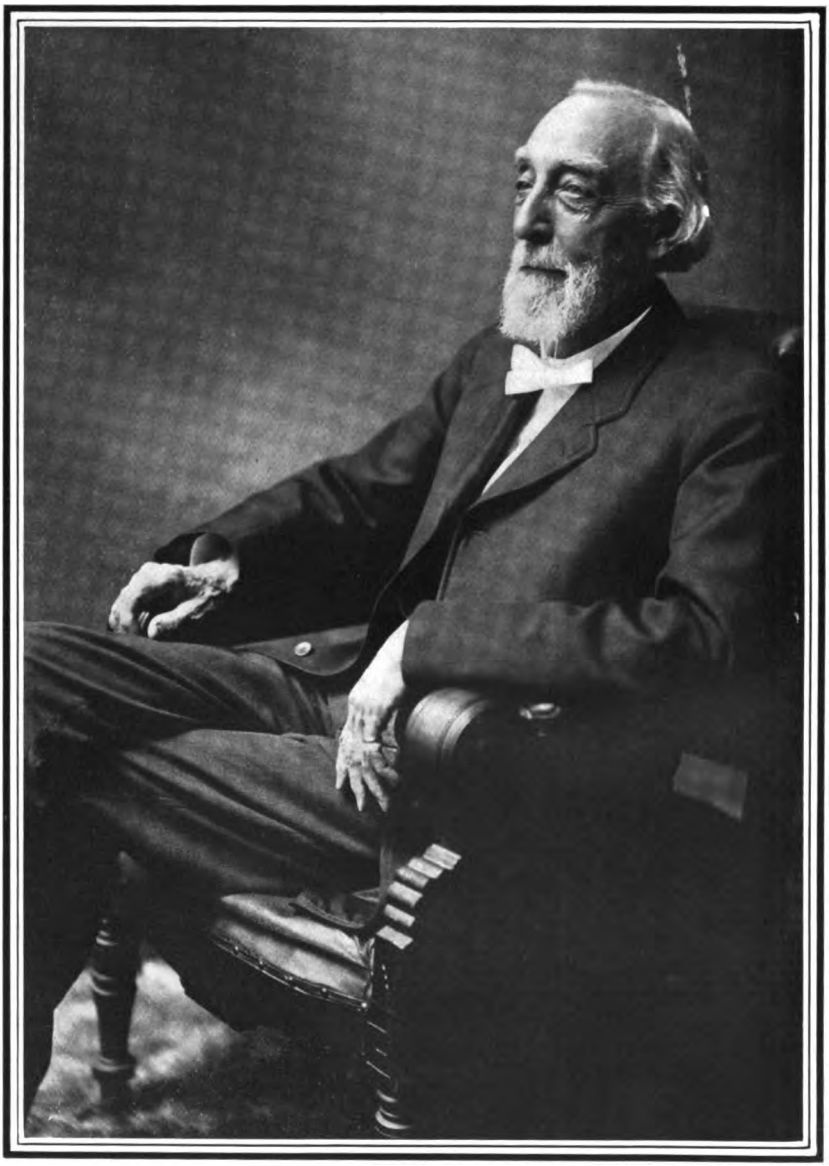
Report of Proceedings of the ... Annual Session of the Georgia ...

Georgia Bar Association,
John Wesley Akin, Orville Augustus Park





Yours Truly Joel Braucham.

REPORT

of the

Twenty-Eighth Annual Session

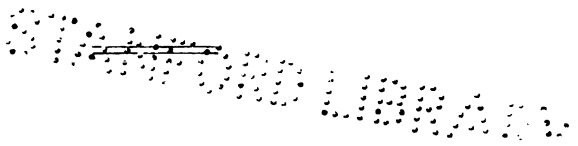
of the

Georgia Bar Association

Held at St. Simon's Island, Georgia

June 1-2, 1911

EDITED BY
ORVILLE A. PARK, SECRETARY



MACON, GEORGIA
THE J. W. BURKE COMPANY
1911

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THOSE WHO ATTENDED

Abrahams, E. H.	Savannah.
Adams, S. B.	Savannah.
Alexander, I.	Augusta.
Alston, R. C.	Atlanta.
Atkinson, D. S.	Savannah.
Atkinson, S. C.	Atlanta.
Bancker, A. H.	Atlanta.
Barrett, W. H.	Augusta.
Bennett, S. S.	Quitman.
Black, E. R.	Atlanta.
Black, J. C. C.	Augusta.
Blackshear, A.	Augusta.
Bleckley, Logan	Atlanta.
Bloodsworth, O. H. B.	Forsyth.
Blount, W. A.	Pensacola, Fla.
Branch, L. W.	Quitman.
Branham, Joel	Rome.
Brown, Thos. J.	Elberton.
Bunn, W. C.	Cedartown.
Butts, E. C.	Brunswick.
Callaway, F. E.	Atlanta.
Cohen, E. A.	Savannah.
Collins, E. C.	Reidsville.
Colquitt, W. T.	Atlanta.
Conyers, C. B.	Brunswick.
Cox, E. E.	Camilla.
Crawley, Jerome	Waycross.
Crawley, J. L.	Waycross.
Crovatt, A. H.	Brunswick.
Crum, D. A. R.	Cordele.
Cunningham, T. M. Jr.,	Savannah.
Daley, A. F.	Wrightsville.

Dart, F. Willis ..... Douglas.
Dobbs, E. O. ..... Buford.
Douglas, Hamilton ..... Atlanta.
Dunwoody, H. F. ..... Brunswick.
Edmondson, G. C. ..... Quitman.
Ellis, R. C. ..... Tifton.
Evans, A. W. ..... Sandersville.
Fogarty, D. F. ..... Augusta.
Gale, A. D. ..... Brunswick.
Ganahl, I. ..... Augusta.
Gordon, W. W. Jr., ... Savannah.
Griffin, W. H. ..... Valdosta.
Guerry, Dupont ..... Macon.
Hamby, R. E. A. ..... Clayton.
Hammond, T. A. ..... Atlanta.
Hammond, W. R. ..... Atlanta.
Harris, W. A. ..... Macon.
Harrison, Z. D. ..... Atlanta.
Hawkins, E. A. ..... Americus.
Heath, L. E. ..... Douglas.
Hillyer, George ..... Atlanta.
Hitch, R. M. ..... Savannah.
Hofmayer, I. J. ..... Albany.
Hopkins, L. C. ..... Atlanta.
Hutchinson, N. L. Jr. ..... Lawrenceville.
Isaac, Max ..... Brunswick.
Kay, W. E. ..... Jacksonville, Fla.
Kilpatrick, J. D. ..... Atlanta.
Kline, A. R. ..... Moultrie.
Krauss, D. W. ..... Brunswick.
Laing, H. R. ..... Waverly.
Lambdin, W. W. ..... Waycross.
Lane, A. W. ..... Macon.
Lawson, H. F. ..... Hawkinsville.
Lawson, Hal ..... Abbeville.
Lumpkin, J. H. ..... Atlanta.
Maynard, R. L. ..... Americus.
Meader, R. D. ..... Brunswick.

Meldrim, P. W. ..... Savannah.
Merrill, J. Hansell ..... Thomasville.
Miller, W. K. ..... Augusta.
McCall, J. G. ..... Quitman.
Owens, Geo. W. ..... Savannah.
Park, Orville A. ..... Macon.
Parks, B. G. ..... Waycross.
Payne, J. Carroll ..... Atlanta.
Payton, Claud ..... Sylvester.
Peeples, H. C. ..... Atlanta.
Pottle, J. R. ..... Blakley.
Reese, Millard ..... Brunswick.
Rosser, L. Z. ..... Atlanta.
Sibley, S. H. ..... Union Point.
Slaton, Jno. M. ..... Atlanta.
Slicer, J. S. ..... Atlanta.
Smith, Alex. W. ..... Atlanta.
Smith, Burton ..... Atlanta.
Smith, John R. L. ..... Macon.
Snow, Russel ..... Quitman.
Spence, A. B. ..... Waycross.
Spence, W. N. ..... Camilla.
Sweat, J. L. ..... Waycross.
Walker, B. S. ..... Waycross.
Watkins, Edgar ..... Atlanta.
Westbrook, Cruger ..... Albany.
Wilkes, J. A. ..... Moultrie.
Willingham, Wright ..... Rome.
Wright, Barry ..... Rome.

REPORT OF PROCEEDINGS

OF THE TWENTY-EIGHTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION, HELD AT ST. SIMONS' ISLAND, GEORGIA, JUNE 1-2, 1911.

MORNING SESSION, JUNE 1, 1911.

The twenty-eighth annual session of the Georgia Bar Association was opened in the New St. Simons' Hotel at St. Simons' Island, Georgia, at 11:00 A. M., and was called to order by the President, Judge Joel Branham, of Rome.

The President: The twenty-eighth annual session of the Georgia Bar Association now convenes. The first order of business this morning is the report of the Executive Committee, of which Mr. Eugene R. Black, of Atlanta, is Chairman.

Mr. E. R. Black (Atlanta): Mr. President, the Executive Committee has endeavored to arrange a program, which will be, at once, interesting and as pleasurable as possible. To that end, we have made our program short and our ocean long, and we invite the coöperation of the members, both in the business of the meeting and the pleasures of the meeting.

At a meeting of Executive Committee, it was resolved that we request the Association to transfer Mr. Justice Joseph R. Lamar from the active to the honorary membership list.

We invited the different local Associations to send delegates to this meeting. Some of those delegates are present, and the Executive Committee takes this opportunity to let them know that they are more than welcome, and that we are delighted to have them with us.

The question has come up as to the matter of advancing the interests of this Association. The Executive Committee feels that, if we could get more largely the coöperation of the Ex-Presidents of the Association, it would be a good thing for this Association. We have present with us a number of those Ex-Presidents, and we suggest that they coöperate in advancing any plan, that appeals to them, in an effort to advance the interests of this Association.

The following new members have been elected:

George C. Grogan	Elberton.
Jerome Crawley	Waycross.
J. L. Crawley	Waycross.
John S. Walker	Waycross.
Harry D. Reed	Waycross.
Benj. G. Parks	Waycross.
Russell Snow	Quitman.
Max Isaac	Brunswick.
Millard Reese	Brunswick.
J. A. Bale	LaFayette.
James E. Rosser	LaFayette.
John D. Taylor	Summerville.
Jesse T. Jolly	Summerville.
J. M. Bellah	Summerville.
W. J. Nunnally	Rome.
Max Myerhardt	Rome.
John K. Davis	Cedartown.
E. R. Griffith	Buchanan.
James K. Hines	Atlanta.
A. H. Bancker	Atlanta.
Alvin H. Gray	Blakely.
Wm. W. Wright	Blakely.
Chas. D. Russell	Blakely.
Grover C. Edmondson	Quitman.
Stanley S. Bennett	Quitman.

After the reports of our Committees this morning, we will have the President's annual address. At the conclusion of this address, we will adjourn.

At 3:00 o'clock this afternoon, we will meet in an afternoon session. At that session there will be a short address by Hon. Dupont Guerry, of Macon. At the conclusion of this address, we will take up the special order of business, which was set at the last meeting of the Association as the first business for this meeting, and that is the discussion of the judicial system and reforms in judicial procedure.

To-morrow morning at 10:00 o'clock we will meet again. At that time, the principal address will be delivered by Hon. W. A. Blount, of Pensacola, Florida. He is our guest of honor, and at that time he will deliver an informal address. It is unnecessary for me to say for the Executive Committee and the Bar Association that we are very much delighted to have Mr. Blount with us, and we hope he will enjoy being with us as much as we will enjoy having him here.

At 2:30 to-morrow afternoon, there will be a boat ride, which will start at the pier here, and will go to Jekyl, and probably to Dungeness, and on that boat ride there will be refreshments served. Every member of the Association, every attendant of the meetings of the Association, all of the ladies present, and all of the guests of the hotel, who desire to go on that boat trip, will be most cordially welcomed.

To those of you, who intentionally, and to those of you, who accidentally, desire to stay over Saturday, I will state that the hotel management have placed the hotel and the ocean at our disposal. They will both be here then, and we desire to have you stay over, if you can.

The Brunswick Bar appointed a special Committee on Entertainment, and that Committee has done everything in its power to make this meeting a success. They are taking care of us, and they are furnishing to-day refreshments (most of you have been apprised of that fact), and they will be delighted to have you partake of them.

The President: You have heard the report of the Executive Committee. There is no motion necessary for its proper reception, and it will be embraced in the minutes.

One recommendation is noted; to transfer Judge Lamar's name to the list of honorary membership. (On motion the transfer was ordered made.)

Col. Z. D. Harrison (Treasurer): On June 8th, 1910, the date of the last report by your Treasurer, the balance on hand was $700.81. Since that date he has collected $1,745, making a total of $2,445.81. The expenditures of the Association during the past year, that is, since June 8th, 1910, to this date, have been $1,578.58, leaving a balance of cash on hand of $867.23. This report, with all of the vouchers, showing the expenditures, has been submitted to the Executive Committee, and by that Committee was approved on yesterday. Nothing more occurs to me to state in regard to this report, unless it is the desire of the Association to have the list of expenditures read.

The President: That will not be necessary, and the report will stand adopted, with the thanks of the Association to our Treasurer for his careful attention to the financial matters of the Association. The report will be embraced in our proceedings, and be filed with the Secretary for that purpose.

(For the report of the Treasurer, see Appendix A.)

The President: Next will be the reports of Standing and Special Committees. First, is the Committee on Legislation, Hon. Roland Ellis, of Macon, Chairman.

The Secretary: I think Mr. Ellis has not reached here yet.

The President: Very well, we will pass that. Next is report of Committee on Federal Legislation, Senator A. O. Bacon, of Macon, Chairman.

The Secretary: Senator Bacon will not be here, Mr. President. There is no other member of the Committee prepared to report at this time, I believe.

The President: Report of Committee on Interstate Law, Mr. W. K. Miller, of Augusta, Chairman.

The Secretary: Mr. Miller is here. If he is not in the hall, we will probably have to pass that for the present.

The President: Very well. Report of Committee on Legal Education and Admission to the Bar. But—I see Mr.

Miller has just arrived. Therefore, we will call on Mr. Miller for his report as Chairman of the Committee on Interstate Law.

(For report of Committee on Interstate Law, see Appendix B.)

The Secretary: Mr. President, I would like to say, in line with Mr. Miller's report, that I did transmit to the Chairman of the Committee of the Legislature, having in charge the preparation of the new Code, copies of these bills, and copy of the report submitted at the last meeting, but no action whatever was taken so far as I know, and I do not think I even had an acknowledgment from the Chairman of that Committee.

The President: Is there anything further to be said on this report? If not, the report will stand adopted.

We will now have the report of Mr. Pottle, Chairman of the Committee on Legal Education and Admission to the Bar.

Mr. J. R. Pottle (Blakely): Before reading this brief report of your Committee on Legal Education and Admission to the Bar, I think perhaps I ought to state that this report was prepared by me as Chairman of the Committee, and copies of the report forwarded to the several members of the Committee. I had replies from Mr. John T. Norris, of Cartersville, and Mr. H. A. Alexander, of Atlanta, both of whom stated that they approved the report. I have had no reply from Mr. Geo. S. Jones, of Macon. Mr. Hamilton Douglas, of Atlanta, stated this morning that he did not concur entirely in the report of the Committee, and that he would probably have some suggestions to offer after the report was read. I therefore submit the report with that statement.

(For the report of the Committee on Legal Education and Admission to the Bar, see Appendix C.)

The President: Assuming that there is a motion that the report be received and adopted, the report is now open for discussion.

Mr. Hamilton Douglas (Atlanta): Mr. President, I have been here with Bob Pottle all day yesterday, resting around on the sands, and having a good time, and I did not know this report was to be presented so early; otherwise, I would have before now brought before him the two or three matters I had to bring before him in a suggestive way. I was put duly on notice of that report being made in that shape, and that my name was on the report, and it was my purpose to suggest some slight changes in phraseology rather than changing the report as made. I most cordially and heartily accord with the sentiments of the report as made, in the main.

I do, however, object to the use of my name in one place in the report as to the second recommendation of the previous Committee on this subject. It makes no difference if I did make the motion referred to. I don't like to see it there, and I think it is out of place there.

I think the great thing we need to increase the efficiency of lawyers coming to the Bar in Georgia is this: An amendment to our statutory law, that will make it possible for the Examiners to have more than one day, during which they may examine candidates on those topics prescribed by the Code. I went to Mr. Alex. King, and asked him "How it is that young men, who have never studied law, go to the Atlanta Law School for six months, and take that examination, and are admitted? How is it? What encouragement do you give to the Law Schools of Georgia, who are endeavoring to provide a full two years' course"? Well, he answered me in this wise: "The law only gives us one day to conduct these examinations, and we are limited to certain topics, on which the candidate must be examined, and we cannot give such thorough examination as we would wish to give."

We all agree that no lawyer can be too well informed. You search the great Justices of England, and you will find them nearly all college men from Cambridge, Oxford, and so on. A person cannot learn too much in any vocation or avocation. At the same time, when you are going to lay down

the literary culture that a man should have in this State to enter the profession, I should like to see the report framed a little differently before my name is added to it. I am making a minority report. When you use the words, "A man should have a high school education," what do you mean by it? It is too indefinite and vague. I think the words, "A man that comes up as a candidate for admission to the Bar, should have a thorough understanding of English before he goes to practice law," put it much better. When you think of such a man as Henry Clay, who never had any literary knowledge, gained in the academy or the college, and such men as Andrew Jackson, Andrew Johnson, Abraham Lincoln, Patrick Henry, William Pinckney, of Maryland, Charles O'Conner, of New York, the only man who ever did really decline the Presidential nomination, and one of the greatest lawyers that ever lived, God bless his memory—when you think of such men as these, who never had the opportunity of even academic education—it does seem to me that it would not be meet and proper for us to prescribe that a man should have just this and that in high school work, but that he should have the *equivalent* of it. I am not saying that he should not have what equals it. I have no doubt that John Marshall had the equal of it, but John Marshall, the great expounder of the Constitution, never was able to go to a school or a college; and I have no doubt the great Chief Justice was the equal in a literary sense of many a college man. The same might be said of Abraham Lincoln, Andrew Johnson, and a dozen others; and I do not think it the proper thing to put on our statute books that a man should have a high school education, because it means nothing. I am in favor of putting on our statute books everything we can that will increase the learning required as a preparatory measure for the lawyer, and the number of years he should study law, if you please.

I saw my friend, Judge Adams, shake his head when I was mentioning the question as to whether only one day was given to examination.

Judge S. B. Adams (Savannah): I did not shake my head, sir.

Mr. Hamilton Douglas (Atlanta): I beg your pardon. I misunderstood you. My friend is so much better learned in the law than I am, I thought I might have made a mistake. As a matter of fact I studied law three years, and have tried to practice it twenty-five years, and I have come to find out how little I know about it.

There is one thing we need that should be in that report above all things—of course a man should have the equivalent of a high school education; of course he should have other literary preparation; but—no Board of Examiners should be held down to one day for the examination of a man on subjects that are or may be prescribed by the Code, and that are necessary for him to understand in order to be a somewhat efficient lawyer.

Mr. E. R. Black (Atlanta): The hour for your address, Mr. President, has come, and I move that we proceed to that now, and lay aside the balance of these Committee reports.

The President: It will not be necessary to put the motion at all. In advance of the address the President is required to make, let me return thanks for my election to this important office. I am the more deeply grateful for the honor, because it occurred in my absence, and was unsolicited and unexpected. I will now read my address. (Applause.)

(For the President's Address on "Brevity and Reform," see Appendix D.)

At the conclusion of the President's address, the morning session was adjourned.

AFTERNOON SESSION, 3:00 P. M., JUNE 1ST, 1911.

The afternoon session was called to order at 3:00 P. M.

The President: The Association will be in order, gentlemen.

Mr. E. R. Black (Atlanta): Mr. President, the following new members have been nominated by the Executive Committee since our session this morning.

Mr. Benj. W. Tye, Atlanta.

Mr. R. B. Blackburn, Atlanta.

Mr. H. F. Dunwoody, Brunswick.

Mr. R. C. Ellis, Tifton.

The Association will now have to elect these applicants for membership. All the Executive Committee can now do is to nominate. As Chairman of the Executive Committee, I take pleasure in nominating these gentlemen.

Upon motion, the Secretary was directed to cast the ballot of the Association for these applicants, and they were declared duly elected members of the Association.

Mr. E. R. Black (Atlanta): In reference to the boat trip for to-morrow afternoon, it will be necessary for tickets to be secured for that trip from Mr. Park, the Secretary. There is no charge for the tickets, but it is necessary to have tickets in order to gain admittance to the boat, and you gentlemen are all requested to get them from Mr. Park. In the suggestion that the gentlemen get tickets I do not mean, of course, that the ladies are not cordially invited to come, but I presume that the gentlemen will get the tickets for the ladies.

By the way, I should state, too, that, instead of the boat leaving from this pier here, it will leave from St. Simons' pier where we got off of the boat coming from Brunswick.

The President: Mr. Douglas, I understand now that you and Mr. Pottle understand one another, and that the Committee, of which you are a member, makes report, as amended by yourself, and we will therefore consider that report adopted as amended.

It is usual at this meeting to appoint a nominating Committee. I will appoint that Committee now to nominate Officers for the ensuing year as follows:

Mr. T. M. Cunningham, Jr., Savannah.

Mr. T. A. Hammond, Atlanta.

Mr. J. R. Pottle, Blakely.

Mr. W. A. Harris, Macon.

Mr. Wright Willingham, Rome.

We will now have a paper from Hon. Dupont Guerry, of Macon.

Mr. Dupont Guerry (Macon): Mr. President and Brethren of the Bar Association: Before reading my brief paper this afternoon, I beg leave to make one personal statement. After an absence of some years, during which time I have made much observation of other people in other fields, and have seen the Bar from the outside, as well as from the inside, I have come back to it with more loyalty and love, and with a higher opinion, than I ever had before. My subject this afternoon is "The Three Judiciaries."

(For Mr Guerry's paper, see Appendix E.)

The President: At the last meeting of this Association the following resolution was introduced:

RESOLVED, That this Association appoint a permanent commission on the Revision of the Judicial System and Procedure in the Courts, to formulate a judicial system for the State, and a system of procedure in the Courts.

This Commission shall be composed of not less than eleven members of this Association, selected by the President, and shall continue in existence from year to year. Any vacancies that may occur shall be filled by the remaining Commissioners, subject to the approval of the Executive Committee of the Association. The Commission shall report to the Association from time to time, as it shall deem proper, but no limit of time for its final report is made. The Commissioners will be expected to serve without compensation, but the Association shall pay the actual expenses of the members incurred in attending meetings of the Commission or committees of the same, when had at other places than the home of a member, and other necessary expenses incurred in progress of this work, when authorized or approved by the Executive Committee of the Association.

When the work is completed, whenever that may be, the judicial system and the system of procedure as formulated, shall be given the widest publicity of which the nature of the matter will permit. Said Commission shall coöperate with any Commission which may be appointed by the Governor from among the members of the Bar of

this State, to take into consideration the revision of the Judicial System of the State, as contemplated by the pending resolution by Hon. H. A. Alexander, of Fulton.

Resolved, Further, That the Association endorses this resolution, and urges its adoption.

On motion of Mr. Alex. C. King, further consideration of this resolution was deferred, to be taken up immediately after the President's address at this session. Mr. King is Chairman of the Committee on Jurisprudence, Law Reform, and Procedure, and we will call on him now for his report.

Mr. E. R. Black (Atlanta): Mr. King is not here. I think Mr. Alston was requested to read his paper.

Mr. R. C. Alston (Atlanta): Mr. King sent his report by me. It is addressed to the Secretary. The original of the report is in my grip, but I have a printed copy, and I will be very glad to present that.

This is the report of the Committee on Jurisprudence, Law Reform, and Procedure, of which Mr. Alex. C. King is Chairman. I merely read his report.

(For the report of the Committee on Jurisprudence, Law Reform, and Procedure, see Appendix F.)

Mr. King appends a note, in which he says that he is in receipt of a communication from Mr. T. S. Felder, a member of the Committee, who agrees to the report except as to the requirements as to printing. From that he dissents.

The Secretary: In order that the position of the Executive Committee may be understood in regard to the handling of this particular matter, I would like to say that at the last meeting, as most of you will recall, Judge Cobb, at the request of the Committee, proposed an outline for the discussion of the judicial administration and constitution of our various Courts. This he divided into five topics, and papers were presented at that time on those topics. We did not have opportunity to discuss these topics on account of the limited time, and so, in connection with the resolution to appoint this permanent Commission, suggested by

Judge Cobb in his report, the Committee this year divided the discussion up in the same way as that outlined by Judge Cobb, as follows:

First. Appellate Courts; their number, constitution, and jurisdiction.

Second. Superior Courts of original jurisdiction; their number, constitution, and jurisdiction.

Third. Procedure in the Courts of original jurisdiction.

Fourth. Justice Courts; their constitution, jurisdiction, and the procedure therein.

Fifth. Procedure in criminal cases.

The Committee has invited several gentlemen to discuss informally these different topics, in order that the matter may be before the Association, and that the discussion may be properly directed. The idea of the Committee is to make the discussion as informal as possible, and to invite the entire membership to participate in this discussion so far as they may see fit to do so. I would suggest, as there are several members here, who have promised us papers on the subject, "Superior Courts of Original Jurisdiction, their Number, Constitution, and Jurisdiction," that we take up that topic first.

The President: Mr. A. F. Daly, of Wrightsville, Ga., is the first named on the list.

(For Mr. Daly's remarks, see Appendix G.)

The President: The next gentleman to be heard from is Mr. F. Willis Dart, of Douglas. We will now be pleased to listen to Mr. Dart.

(For Mr. Dart's remarks, see Appendix H.)

The President: We will next have the pleasure of hearing from Mr. Joseph W. Bennett, if he is in the hall.

The Secretary: He is not here, Mr. President.

The President: We will now hear from Mr. R. M. Hitch, of Savannah, on the subject, "Procedure in the Courts of Original Jurisdiction."

Mr. R. M. Hitch (Savannah): Mr. President, and Gentlemen of the Bar Association: I did not know just how formal these talks were to be; so I shall informally sub-

mit a paper. It is possible that I may at some future day remember Judge Branham's warning about the free use of stationery, but nevertheless, since I have been asked to express my views, I shall do so freely.

Before submitting the paper, which I have prepared, I wish to offer just one word of explanation. I did not deem it practicable in a short paper to deal with the procedure in all the Courts of original jurisdiction, and therefore my suggestions will relate, except where otherwise specified, to the procedure in the Superior and City Courts. I have found it necessary, to run out the plans which I have suggested, to make some reference to the procedure in the Appellate Courts on account of the changes which I propose in reference to the procedure in the trial Courts.

(For Mr. Hitch's paper, see Appendix I.)

Mr. E. R. Black (Atlanta): Mr. President, the Executive Committee appreciates very much the interest that has been taken in this discussion so far. There are a number of members of the Association, however, who as yet have not had an opportunity for a dip in the surf. I am going to suggest, for the consideration of the body, that we adjourn now until 8:30 to-night, and then continue this discussion. I make that motion, Mr. President.

This motion was seconded and carried, and at 5:00 P. M. the afternoon session was adjourned.

EVENING SESSION, 8:30 P. M. JUNE 1ST, 1911.

The evening session was called to order by the First Vice-President, Mr. Geo. W. Owens, of Savannah.

Mr. E. R. Black (Atlanta): Mr. President, the Executive Committee has approved the application for membership of the three following gentlemen:

Mr. H. Roy Lang, Waverly.

Mr. A. B. Spence, Waycross.

Mr. L. E. Heath, Douglas.

On motion, the Secretary was directed to cast the ballot of the Association for these gentlemen, and they were declared duly elected members of the Association.

The Vice-President (presiding): At the hour of adjournment, we had reached the third section of this outlined discussion. Mr. W. C. Bunn, of Cedartown, is the next gentleman who will address the meeting.

Mr. W. C. Bunn (Cedartown): From the reading by Mr. Alston of the report made by Mr. Alex. C. King, as Chairman, I did not hear, and in a cursory re-reading of the report, did not discover any particular reference to the subject which was assigned to me, and I take it that that Committee had nothing particular to recommend on the subject of procedure in the Courts of original jurisdiction. I hope, therefore, in what I have to say, that I will not go counter to the opinion of the able gentlemen who compose that Committee.

I am not, by birth, or tuition, or inclination, a reformer, particularly. I had rather that the word be "improvement" than "reform." I do not take much part in the view that our entire system is greatly at fault, and that there has not been a great amount of wisdom displayed by those who enacted our present laws.

My assignment is upon the subject, "Procedure in the Courts of Original Jurisdiction."

(For the paper by Mr. Bunn, see Appendix J.)

The Vice-President (presiding): Mr. Wm. K. Miller, of Augusta, will next address the Association upon this subject.

Mr. W. K. Miller (Augusta): Mr. President and Gentlemen: I have been requested to say a few words on the subject, "Procedure in Courts of Original Jurisdiction."

(For Mr. Miller's paper, see Appendix K.)

The Vice-President (presiding): Mr. J. S. Slicer, of Atlanta, will next address the meeting upon the subject, "Justice Courts, their Constitution, Jurisdiction, and Procedure." Mr. Slicer, gentlemen.

(For Mr. Slicer's paper, see Appendix L.)

Mr. J. S. Slicer (Atlanta): Gentlemen, the State Bar Association is supposed to be made up of the very best legal talent of the State, and the business men, whom we represent, and out of whom we make our fees and our living, have the right to expect that the Bar Association shall bring about a reform in the Justice Courts in the Cities, and at some proper time during this meeting, I would like to make a motion that a Committee be appointed by this Association, with the authority to investigate the conditions existing in the cities of different sizes, and that we frame a bill, and send that bill to the Legislature with the recommendation that it be passed, and that this Association take an active part in that reform, and try to get every member of the Association to have his members of the Legislature and his Senator actively to support that bill.

The Vice-President (presiding): The next topic for discussion—"Procedure in Criminal Cases"—will be handled this evening by Mr. A. W. Evans, of Sandersville. We will hear now from Mr. Evans.

Mr. A. W. Evans (Sandersville): I was much impressed this morning with the address by our very great President. It must have been a sort of telepathy that suggested to him his subject of "Brevity," and I shall follow his suggestion. In pursuance of it I have embodied just a few recommendations or suggestions relative to procedure in criminal cases. You will note that I am not one of those who believe that our judiciary or our system of procedure is going to the dogs; you will note that through this paper there is a spirit of optimism, and I believe that a careful student, when he takes the matter under careful advisement, will abandon the idea espoused by many that our system of procedure, especially in criminal cases, is so terribly lax and inefficient.

(For Mr. Evans' paper, see Appendix M.)

The Vice-President (presiding): Mr. O. H. B. Bloodworth, of Forsyth, will now address the meeting. Is Mr. Bloodworth here? (No response.) Well, gentlemen, that concludes the program for the evening session.

Mr. J. H. Merrill (Thomasville): I have a very brief resolution, which I wish to offer. Some of you may remember two years ago when I put myself on record before the Association as favoring the abolition of the City Courts and the multiplication of the Superior Courts as the best and most practicable remedy for the evils of the judicial system, that we have. It has therefore delighted me very much to-day as I have heard one gentleman after another advance that idea and advocate it. I am not claiming to have originated it, and I only mention my advocating it two years ago to show how long I have been thinking about it, and therefore how deeply set I am in my opinion that that is the best thing we can do. We have a great many papers and a great many discussions, but possibly many of our ideas do not crystallize into action. I think it is wise that we should not be in any undue haste about it, but still it occurs to me, from what I have heard to-day, that the Association is about ready to let this one suggestion crystallize into definite action, and to see whether I am right or not, I move the adoption of this resolution.

RESOLVED, That it is the sense of this Association that the best practical remedy for the evils of our judicial system is, that the city courts of the State should all be abolished, and the Superior Courts be multiplied so as to have sessions held quarterly in every county.

The Secretary: Mr. President, it is so late, and there are so few of our members present, that I do not think we ought to act on so important a resolution as this. I therefore move that action on this resolution be deferred until to-morrow morning.

Mr. J. H. Merrill (Thomasville): I am agreeable to that, and I hesitated about offering it for the reasons that Mr. Park suggests, but it occurred to me that other matters would be coming up to-morrow, and it would not be so opportune a time to present it as it is to-night, but I think postponing it will take it over in proper shape.

The Vice-President (presiding): The resolution will be carried over until to-morrow morning as unfinished business.

A motion to adjourn was then made and seconded.

Mr. Hamilton Douglas (Atlanta): Mr. President, I want to read a resolution.

The Vice-President (presiding): A motion to adjourn has been made and seconded, and, not being debatable, I will proceed to put it.

The motion to adjourn until to-morrow morning was then put to a vote, but before the result was announced, the Chair recognized Mr. J. L. Sweat, of Waycross.

Mr. J. L. Sweat (Waycross): Mr. President, the motion to adjourn is until 10:00 o'clock to-morrow morning, as I understand it. I think that quite a number of the members may perhaps have to leave at 10:30, and I therefore move to amend the motion to adjourn (and I hope it will meet with the favor of those present), because I think in view of the program for to-morrow it is necessary that we adjourn until 9:00 o'clock to-morrow morning. (Seconded.)

Mr. Hamilton Douglas (Atlanta): Now, that motion to adjourn is debatable.

The Vice-President (presiding): No, sir, a motion to adjourn to a fixed time is amendable but not debatable. You may amend the motion, if you desire.

Mr. Hamilton Douglas (Atlanta): A motion to adjourn was made and seconded. That is not debatable. The motion to adjourn is then amended to adjourn to a fixed time. That makes it debatable.

The Vice-President (presiding): I do not agree with you. A motion to adjourn to a fixed time is amendable, but not debatable.

The amended motion to adjourn was then carried.

MORNING SESSION, 9:00 A. M., JUNE 2ND, 1911.

The morning session was called to order at 9:00 A. M. by the First Vice-President, Mr. Geo. W. Owens, of Savannah.

The Vice-President (presiding): The Association will please come to order. The first thing on the program this morning will be a paper, to be read by Mr. J. Carroll Payne, of Atlanta, by special request of the Executive Committee.

Mr. E. R. Black (Atlanta): To save Mr. Payne the trouble of stating it, I will state that this paper has been read to the Georgia Bar Association a number of years ago (1896). Mr. Payne, at the urgent request of the Executive Committee, has kindly consented to read the paper for us this morning.

Mr. J. Carroll Payne (Atlanta): This is a paper concerning certain litigation carried on for many years by a reputed daughter of a gentleman by the name of Daniel Clarke, who resided in the City of New Orleans before it became territory of the United States.

(For Mr. Payne's paper, see Appendix N.)

A five-minutes' recess was then taken before the beginning of the annual address.

The Vice-President vacated and the President resumed the Chair.

The President: Gentlemen, you will please come to order. I want to state that this session this morning will be continued until we get through with the business. It will be important not to adjourn until everything is completed, because we cannot transact any business after we adjourn this morning.

It is unnecessary, gentlemen of the Association, and ladies, for me to eulogize the learned and distinguished gentleman, who has so kindly consented to address you this morning. He is a graduate of the University of Georgia, a citizen of the State of Florida, and President of the Florida Bar Association. Without, therefore, trespassing upon your time, I will say that his fame and reputation have gone before him, and it gives me very great pleasure to present to you the Hon. W. A. Blount, of Pensacola, Florida, who will now address you. (Applause.)

(For the address of Mr. Blount, see Appendix O.)

The President: Next, gentlemen, we will have a paper by the Hon. J. C. C. Black, of Augusta.

(For Mr. Black's paper, see Appendix P.)

Judge S. B. Adams (Savannah): Mr. Chairman, permit me to offer a short resolution:

RESOLVED, By the Georgia Bar Association, in its regular annual meeting assembled, That this Association regards with great satisfaction and approbation, the elevation to the bench of the Supreme Court of the United States of our fellow member, Joseph Rucker Lamar.

In common with all the lawyers of the State, and our people generally, we regard the appointment as eminently fit and deserved, and we anticipate for Judge Lamar, with entire confidence, a career of great distinction and success in his exalted position.

Resolved, that one copy of this action be sent by our Secretary to Judge Lamar and another to the President of the United States.

This resolution was passed unanimously by rising vote.

The President: Is the Nominating Committee ready to report?

Mr. T. M. Cunningham, Jr. (Savannah): Gentlemen, I am instructed by the Committee to submit the following as their unanimous recommendation:

For President—Alex. W. Smith, Atlanta.

For First Vice-President—W. C. Bunn, Cedartown.

For Second Vice-President—John R. L. Smith, Macon.

For Third Vice-President—R. D. Meader, Brunswick.

For Fourth Vice-President—L. W. Branch, Quitman.

For Fifth Vice-President—Thomas J. Brown, Elberton.

For Secretary—Orville A. Park, Macon.

For Treasurer—Z. D. Harrison, Atlanta.

For Chairman of the Executive Committee—W. W. Gordon, Jr., Savannah.

Other members of the Executive Committee—I. J. Hofmayer, Albany; W. H. Barrett, Augusta; H. C. Peeples, Atlanta.

Mr. E. R. Black (Atlanta): Mr. President, I move that the rules be suspended, and that the Secretary be directed to cast the ballot of the Association for these gentlemen as officers of the Association for the next year.

This motion was seconded and carried, and the officers were declared duly elected.

Mr. J. Carroll Payne (Atlanta): Mr. President, I move that a rising vote of thanks be extended to Hon. W. A. Blount, of Pensacola, Florida, on behalf of this Association, for his courtesy in coming to this meeting, and his able and thoughtful address to us this morning.

This motion was seconded and carried unanimously by rising vote.

The Secretary: I had just prepared a resolution of thanks to the Brunswick Bar Association, and others, including Mr. Blount. However, I was glad to have the resolution of thanks to Mr. Blount offered by Mr. Payne, and I will eliminate that part of my resolution, and will offer the balance of it as follows:

RESOLVED, That the thanks of this Association be extended to the Brunswick Bar Association for their untiring efforts to make this meeting a success, and for the many courtesies extended; to Messrs. Bunn and Gibson, proprietors of the New Hotel St. Simons', for the splendid manner in which, in spite of the many inconveniences and annoyances attending the opening of a large new hotel, they have anticipated and provided for the wants of our membership.

This resolution was seconded and unanimously carried.

Mr. R. C. Alston (Atlanta): Mr. President, at the last meeting of the Bar Association, there was left as unfinished business a resolution, which was offered by your Committee on Jurisprudence, Law Reform, and Procedure. That resolution is printed at pages 45 and 46 of the Report. It provides for the establishment of a permanent Commission on the Revision of the Judicial System and Procedure in the Courts. I will not stop to read it, as it has been read already before this Assembly. When that was offered and seconded, Mr. King moved that it be postponed for consideration at this meeting. Now, in order that it may be brought before us and disposed of, I move that this resolution be adopted as the sense of this Association, and that a Committee be appointed in accordance with the requirement, and that they be empowered as prescribed therein.

The President: How shall that Committee be appointed?

Mr. R. C. Alston (Atlanta): By the President.

Mr. Alston's motion was seconded by Mr. Lambdin.

Mr. Hamilton Douglas (Atlanta): I am going to have the temerity to offer an amendment in the hope of making the number of the Committee smaller, and providing for some of their expenses, that we may arrive at more definite results. In other words, this is the resolution, that I wanted to read and lay over on the table:

Be it Resolved: 1. That a Committee of five, composed of the Ex-presidents of this Association, appointed by the retiring President, for the purpose of preparing new laws, or amendments to law, which shall embrace such suggestions made by the various papers and discussions, as may seem to said Committee proper, putting such proposed amendments or new law in proper shape for presentation to the Legislature.

2. That said Committee shall report such proposed new law, or amendments, to the next annual meeting of the Association for such action as may seem proper to the Association at its next meeting.

3. That said Committee shall be allowed at least one joint-meeting at the expense of the Association, being paid for such expenses actual traveling and hotel expenses, not to exceed a session lasting five days.

The President: A motion has been made by Mr. Alston to appoint a permanent Committee of eleven persons, pursuant to the report of the Committee on Jurisprudence, Law Reform, and Procedure, as made by Judge Cobb at the last session. Mr. Douglas offers an amendment, which you have heard read. Of course, if the amendment carries, the resolution proposed by Judge Cobb, or rather by that Committee at the last session, will be defeated.

Mr. Hamilton Douglas (Atlanta): May I make this one remark? In offering this amendment, my only purpose is to follow out what was provided for by Judge Cobb, and to give some concrete shape to our acts. Our work in this Association is of two kinds—academic and remedial—and we have never yet taken steps to put on the statute books those remedies we say we ought to have. I would adopt Mr. Alston's original motion, only I would decrease the number—I would make it five or I would make it all of the

Ex-Presidents of this Association, and then I would pay them something, so that they might meet together and do the work for us.

Mr. R. C. Alston: The resolution of Mr. Douglas provides for the appointment of a Committee, and that that Committee shall be allowed at least one joint meeting (or more) at the expense of the Association, being paid for such expense actual traveling and hotel expenses not to exceed a session of five days. This resolution, which is proposed by the Committee, is as follows:

RESOLVED, That this Association appoint a permanent Commission on the Revision of the Judicial System and Procedure in the Courts, to formulate a judicial system for the State, and a system of procedure in the Courts.

This Commission shall be composed of not less than eleven members of this Association, selected by the President, and shall continue in existence from year to year. Any vacancies that may occur shall be filled by the remaining Commissioners, subject to the approval of the Executive Committee of the Association. The Commission shall report to the Association from time to time as it shall deem proper, but no limit of time for its final report is made. The Commissioners will be expected to serve without compensation, but the Association shall pay the actual expenses of the members incurred in attending meetings of the Commission or committees of the same, when had at other places than the home of a member, and other necessary expenses incurred in progress of this work, when authorized or approved by the Executive Committee of the Association.

When the work is completed, whenever that may be, the judicial system and the system of procedure as formulated, shall be given the widest publicity of which the nature of the matter will permit. Said Commission shall coöperate with any Commission which may be appointed by the Governor from among the members of the Bar of this State, to take into consideration the revision of the Judicial System of the State, as contemplated by the pending resolution by Hon. H. A. Alexander, of Fulton.

Resolved Further, That the Association endorses this resolution and urges its adoption.

Now, Mr. President, in regard to—

Mr. Hamilton Douglas (Atlanta): I think I can save you some time, Mr. Alston. Since the reading of that resolution, I will ask unanimous consent to strike what I have

said, and the hastily drawn resolution I offered, from the record, and adopt what was offered last year. That resolution covers the purpose I am after.

Mr. P. W. Meldrim (Savannah): Reference was made in that resolution to a proposed Commission under a resolution introduced by Mr. Alexander of Fulton. I rise now to move that that be stricken from this resolution. My understanding is that Mr. Alexander is no longer in the Legislature, and that resolution did not pass. And so I move to amend this resolution by striking off all words after the word "Governor" at the end of the first and the beginning of the second line on page 46 of the Report.

A Member: Mr. Meldrim, I understand that there will be no other Commission. Do you think it would be well to keep that in or restrict it to the one Commission?

Mr. R. C. Alston (Atlanta): The Commission might think it well to ask the Legislature for a Commission on the subject, to coöperate with this Commission. It is in their power to do it, but they are not compelled to do it. How about adding after the word, "Governor," the words, "should any such Commission be authorized"?

Mr. W. W. Lambdin (Waycross): Why not have it read, "One from each Congressional District"?

Mr. R. C. Alston (Atlanta): This now reads, "Said Commission shall coöperate with any Commission, which may be appointed by authority of the State, should any such Commission be appointed."

The President: It is suggested also here that one should be appointed from each Congressional District of the State.

Judge George Hillyer (Atlanta): I want the Association to indulge me (and I am famous for speaking briefly) to say that this is a movement which I have long had at heart, and I think that, perhaps better than most of you, I have been in the way of knowing the fact that it is a movement in keeping with what is going on almost universally all over the United States.

It would surprise you, if you had knowledge as to how many Bar Associations have taken action just like this. The

National Bar Association has done the same thing, and most wise recommendations were sent up to Congress. While only one of the recommendations made by the National Bar Association was approved by Congress, yet it was one of the most important, forbidding the granting of new trials for such errors as do not affect the merits. I understand, too, this, the wider sentiment, has been endorsed twice by President Taft in his annual messages; by his predecessor; and very generally by the judges.

Now, indulge me in saying that many of the recommendations made here to-day, and some of the papers, to which we have listened, read just like those, which we have heard on more than one occasion, and even as far back as 1894, when I had the honor myself of making the pioneer report and addressing this body on these lines.

It is with peculiar delight I witness what is transpiring here; that the profession has grown and progressed with the times; and that now an organized movement is on foot, which will bear good fruit towards remedying the evils that have grown up in our profession, and in judicial administration.

The President: It occurs to me that the amendments, which have been offered, should be voted on separately.

Judge George Hillyer (Atlanta): As to the amendment to the effect that the Committee shall be appointed, one from each Congressional District, it strikes me that in the wisdom of the President he might find two, or possibly more, fit members from the same Congressional District. This is not a geographical matter, and should not have any reference to the political subdivisions of the State.

Mr. T. A. Hammond (Atlanta): It seems to me that we ought to have this Commission, whether there is any Commission appointed by the Governor, with whom we might coöperate, or not. It seems to me that it would be wise to appoint this Commission, and have embodied in the resolution a request to the Governor that he do appoint such a Commission. It is now just simply left up in the clouds as to whether one may or may not be appointed, with whom

we might or might not coöperate. We wish this Commission anyway, and we ought to have some resolution, requesting the Governor to nominate a Commission to coöperate with us.

The President: The resolution provides that our Commission shall coöperate with the State's Commission, should such Commission be appointed.

Mr. T. A. Hammond (Atlanta): I think it would be well to add to that a request to the Governor to appoint such a Commission.

Mr. R. C. Alston (Atlanta): Mr. Hammond's amendment of this resolution is based upon this sentence: "Said Commission shall coöperate with any Commission which may be appointed by authority of the State, should any such Commission be so appointed."

The Governor has no authority to appoint such a Commission; it can only be done by him in pursuance of authority delegated by the Legislature. It is very probable that one of the very first things that the Commission, especially under this resolution, would do would be to ask the Legislature or the Governor to take proper steps to have such a Commission appointed on behalf of the State. The purpose of this is to get a broad, big, liberal Commission, with genuine powers to act, not hampered by any rule or resolution, but have them become our delegates to do an important and great service—to consider the whole judicial system of a magnificent State—and so I think we do best in this matter by giving them the power without giving them direction. (Applause.)

Mr. R. M. Hitch (Savannah): It seems to me that the request of the Governor for the appointment of a Commission by Legislative authority is a matter that could be very properly taken up separately from this. I have a resolution prepared on that line, which I had intended to offer as soon as this matter was passed on.

Mr. R. C. Alston (Atlanta): I move that this amendment be adopted:

"Said Commission shall coöperate with any Commission, which may be appointed by authority of the State, should any such Commission be so appointed."

This motion was seconded and carried.

The President: All right now, gentlemen, the amended resolution is before you, but there was another amendment offered that the members of this Commission should be appointed from each Congressional District. I will put that to a vote.

This amendment was then voted upon and lost.

Judge George Hillyer (Atlanta): I forgot to say this, while I was on the floor, that I have come across a perfect mine of information on this subject in the Journal of the American Institute of Criminal Law and Criminology. I do not know any of the editors personally, though some of them are men of national reputation, but I have been surprised to find how much there is in it on this subject that is intensely interesting. It comes out every two months, and it is eminently useful and practical in dealing with this problem.

The resolution offered by Mr. Alston, as amended, was then put to vote and carried.

The President: I will nominate that Commission, gentlemen, as soon as I can confer with some of the members.

Mr. Z. D. Harrison (Atlanta): At the last session of the Association a resolution was adopted, appointing a Committee to represent the Association before the Legislature in an endeavor to secure an increase in the salaries of the judges. I move that that Committee be called upon for its report. Following that, I wish to make a motion that that Committee be continued, and that the Hon. John C. Hart be added to the Committee.

Mr. J. R. Pottle (Blakely): My report will be very brief. I suppose that every member of the Association knows the result of the efforts of this Committee at the last session of the General Assembly. All of the Committee are present here at this session, save one, Mr. Palmer, and suffice it to say that "we met the enemy, and they are *not* ours."

I trust, however, that all of us bear some honorable wounds as a result of the conflict. We did the best we could. We started out to try to put into effect the first section of this resolution. The truth is that this resolution gave the Committee a pretty large order, but the first section of the resolution committed this Association to the proposition that we favored an increase in the salaries of the judges of the Court of Appeals and the Supreme Court. Your Committee caused bills to be introduced in the House and in the Senate looking to an increase in the salaries of the judges of the Appellate Courts. The bill passed the Senate, and finally passed the House by one vote, and was then immediately reconsidered, and defeated on reconsideration. So that is the situation in reference to that legislation. Those were the only bills that were introduced in the General Assembly in accordance with this resolution.

Now, Mr. President, I heartily concur with the suggestion made by Col. Harrison, that Judge Hart be added to this Committee, and I want to make this further suggestion along that same line, that Judge Hart be designated as Chairman of this Committee. It is a standing Committee, and I am quite willing to serve on it with these other gentlemen, so long as I can be of service, but I think it would be wise to designate Judge Hart as Chairman.

Mr. R. C. Alston (Atlanta): This Committee under Mr. Pottle as Chairman did very strenuous work, very hard work, and very earnest work, in this behalf, as shown by the fact that it came so near success. From the information and experience which I gained in that work, I am opposed to continuing this Committee or continuing service upon it, and that in the face of the fact that I am most earnestly in favor of increasing the salaries of the judges of the Court of Appeals and the Supreme Court, as well as the salaries of the Superior Court Judges. I do not believe that a continuance of this Committee and further work will promote this purpose. The Legislature resented our acts in this behalf, and they vented their resentment to some extent on some of the judges. I believe, if we continue this matter,

that it will not promote our desires or their benefit. It certainly will not do to continue the same personnel of this Committee—I am sure of that. If I were myself passing upon this question for a client, I would say "Let this thing alone;" for there has got to be more of public sentiment behind the movement than at the present time, if it succeeds. We are not making public sentiment by beginning in the Legislature. There must be an arousing of public sentiment, and without it, to undertake this thing every year, you are going to continue to fail. I am sure, if we continue this, that the judges will be looked upon to some extent as greedy, and, if we continue it along the line of pushing the Court of Appeals ahead of the Supreme Court, because of technical legal advantages there are in the situation, which it is not necessary now to state, there will be a general resentment of that, which will reflect back upon the judges of the Court of Appeals. If I understand the position of some of the judges of the Supreme Court at any rate, they are rather of this opinion, too. They think it is best to let it alone. I will not undertake to authoritatively make such a statement, because the ideas I have are not from any particularly direct words uttered by them, but from what I have gathered to be their judgment. My idea is not to continue this Committee at present either with its present personnel or with anybody added to it.

Mr. Z. D. Harrison (Atlanta): I thought it included the judges of the Superior Courts as well.

Mr. J. R. Pottle (Blakely): It includes them all.

Mr. Z. D. Harrison (Atlanta): The effort is on behalf of all of the Judges of the State. Now, I will say that I had no idea of provoking any discussion on this subject. I respectfully submit (there being no time for a real discussion of the merits) that my brother's argument is theoretical and not practical. How are you going to educate anybody, unless you educate the Legislature, and how are you going to reach the Legislature, unless it is through a Committee of this kind? The Committee has shown that it is efficient to do the work, and therefore it is the appropriate and proper thing

to do, it seems to me, to continue that Committee, and have Judge Hart as its Chairman in accordance with the suggestion made.

The motion by Mr. Harrison that this Committee be continued with Judge Hart as its Chairman was then put to vote and carried.

Mr. R. M. Hitch (Savannah): I wish to offer this resolution, Mr. President:

RESOLVED, That the Governor be, and he is hereby respectfully requested, to submit to the General Assembly of 1911, the advisability of creating a Commission of fifteen (15) distinguished citizens to be appointed by the Governor, who shall be charged with the duty of studying the evils which have grown up under the present system of procedure, of making diligent inquiry into the laws of practice and procedure in other States and countries, and of reporting to the General Assembly of 1912, with a plan for the reorganization of our judicial machinery and for a reform and revision of all of our laws of administration and procedure, civil and criminal, to the end that justice may be done with certainty, economy, and dispatch.

The Legislature meets now in a few weeks, and it seems to me that it is important that we should take this action, and transmit it to the Governor, and through him have it transmitted to the General Assembly, with the idea and hope that the Commission created or authorized by the Legislature may be appointed to coöperate with the Commission from this Association.

Mr. P. W. Meldrim (Savannah): That is a Commission of fifteen plus eleven—that is a Commission of twenty-six. Now that is a tremendous big Commission to get together and discuss a question of that kind. It strikes me that one of two things ought to be done—either we ought to reduce our Commission of eleven or reduce the proposed Commission of fifteen to a smaller number. Any of us engaged in the practice of law knows that the greatest danger a client can have is multiplicity of counsel. You cannot have an intelligent discussion with that number of men, and, if it meets with the approval of my friend, I would suggest a reduction of that number, or else let us reconsider our own action, so as to have a smaller and more efficient body. If

fifteen distinguished citizens are appointed, it goes without saying there is going to be more or less expense, and one of the objections in the Legislature will be the large expense, that is the mileage and per diem. I do not care to engage in any discussion of it. I simply throw out that idea, that it would be a much more effective body, and more likely to accomplish the desired result if the number was smaller.

Mr. A. W. Evans (Sandersville): I move that the resolution offered by Mr. Hitch be amended so as to read that the Governor be requested to appoint a Commission of five, three from the House and two from the Senate, rather than fifteen.

Mr. P. W. Meldrim (Savannah): I think the suggestion of the appointment of two from the Senate and three from the House will appeal very much more strongly to legislative wisdom.

The amendment offered by Mr. Evans was then put to vote and carried.

The resolution as offered by Mr. Hitch, and as amended by Mr. Evans, was then voted upon and carried.

Mr. J. H. Merrill (Thomasville): Action was deferred upon a resolution, which I offered last night. I will re-read it as follows:

RESOLVED, That it is the sense of this Association that the best practicable remedy for the evils of our Judicial System is that the City Courts of the State should all be abolished, and the Superior Courts be multiplied so as to have sessions held quarterly in every county.

I have just a word or two to say to those who are present now, in explaining my idea in presenting it. This suggestion has been made now for years before this Association, and it has been made by so many members at this meeting, that it seems to me it would be well to take a vote, and see just the minds of the membership at this session. I wish to say just one word in advocacy of it, and that is that at one stroke the practice all over the State would be made uniform. Then, too, there is the average situation over the State, where there are, say, six counties in a cir-

cuit. Take three of them, and they are paying their city court judges about $3,600. Those three counties could properly be taxed with half of the Superior Court judge's salary; add the $1,500 to the $3,600 and we have $5,100, so that you could pay a judge of the Superior Court $5,000 a year, and give him only three counties, in which he could hold court four times a year. Of course, there would be no necessity for the more frequent assembling of grand juries than now. There are just those two thoughts I have to suggest in submitting it. I am not wedded to this idea, but I am desirous of getting the sentiment of the membership of this Association at this time, and ask that it be now acted upon.

Mr. P. W. Meldrim (Savannah): It has occurred to me, inasmuch as we propose now to raise this Commission to deal with the whole subject matter, it would be better that this resolution be referred to the proposed Commission. So radical a change as is now proposed is going to provoke a great deal of discussion, and, no matter what action we might take, it would be all subject to the final action of the proposed Commission, and I would suggest, therefore, that this resolution be referred to the proposed Commission to consider with such other matters as may come before it.

While I am on my feet, I wish to say that I do not understand, Mr. President, that you are to be pressed at this time for the appointment of the Commission proposed. If we are in earnest about this, we are undertaking a tremendous work, and we are going to meet in the Bar and in the Legislature a conservative element. The lawyers, as a rule, are slow to engage in reform. The older we grow, the less inclined we are to make suggestions either in remedies, practice, or procedure. The point I am making is, if we are going to succeed at all, assuming that there is a demand for a change in procedure, and in remedy, and in practice, and in pleading, we cannot succeed unless the matter is fully and fairly considered. So to consider it, the personnel of your Commission has to be considered with great care. I do not understand that the resolution will require you, Mr.

President, to appoint those eleven members now, and I think ample time should be given to you, so that, when you come to make up the eleven members of this body, who are to coöperate with the Commission appointed by the Legislature, they may be selected, not because of political prominence, but from the members of this Association, who are familiar with the pleading and practice of this State.

My concrete motion is to commit the resolution of my friend to the Commission, for which we have provided.

Mr. T. A. Hammond (Atlanta): I have been a member of this Association for many, many years. It has been my privilege and pleasure to attend nearly all of its meetings, and with but few exceptions it seems to me some member of the Legislature, or some other lawyers not as fond of the Association as I am, take pleasure in twitting me with the proposition, "What did you do, when you got down there, except have a good time and frolic, and have some papers read?" It seems to me we ought to make a reply to those people this time, and, if we never do but the one thing, to at least express ourselves that the city courts ought to be abolished. We can then go back and say, "We did one good thing," and I think Brother Meldrim is wrong in suggesting that we leave this thing to the joint Commission to be appointed. I had rather have them instructed that that shall be one thing to be done, that the city courts ought to be abolished. Let the Commission go with that one thing at least decided. I am opposed to the question of its being left open, and I do not see why this body cannot now as well as any other time express itself as opposed to the city courts. There is nobody directly interested in this proposition except a few judges who are heads of those courts, and they can be encouraged by the fact that we may appoint them Superior Court judges. I think this Bar Association believes we ought to abolish those city courts.

Mr. R. M. Hitch (Savannah): We must necessarily make some provision for other courts to discharge the duties now being performed by the city courts. I believe the suggestion was that Superior Courts be created in their

place, and that Superior Courts hold quarterly sessions. That leads right out into other ideas that call for discussion. I, for one, am opposed to any terms of court. I think the terms of court ought to be abolished entirely. I agree most heartily with Mr. Meldrim's suggestion that this resolution of Mr. Merrill's be referred to this new Commission, which we propose to create, to be considered by them along with all other matters that will come before them relating to changes in practice, procedure, and organization of our Courts. I do not believe in going at this matter of reform by piecemeal. In order to get the desired results, the entire matter should be dealt with by that Commission.

Mr. J. H. Merrill (Thomasville): Just one word. If we pass the resolution, it will of course go to this Commission.

Mr. P. W. Meldrim (Savannah): They would be bound by it.

Mr. J. H. Merrill (Thomasville): They will not be absolutely bound by it, but it will be a suggestion to them as a starting point, as a guide; they would no doubt like to have the sentiments of the Association. I do not see that it can possibly embarrass that Commission in any way, and, if we are going to send it to them, let us send it to them with some expression of our feeling about it. The truth is our friends in Savannah are excellently fixed up with their courts, and we are singularly well fixed in Thomasville with ours, but there is no question about the fact that there are a great many, who are not well provided. We will be able to give jobs on the Superior Court bench to a great many of the capable and worthy city court judges. I think it is well to send this to the Commission, but let us send it with an expression of our approval.

Mr. P. W. Meldrim (Savannah): Reference is made to Savannah. Is it right that a city court adapted to those conditions, existing for a century, by a vote of a small number, be recommended to total oblivion? Is it not very much more to be desired to say that the whole matter should be referred for due and deliberate consideration?

Mr. J. H. Merrill (Thomasville): Would not another Superior Court or two in Savannah accomplish the same purpose?

Mr. P. W. Meldrim (Savannah): You ask the question. It would not. That is the result of the evolution of years. It is adapted to those conditions, and disposes of its work, and there is no Superior Court that has the same machinery, and can do the work with the same degree of facility.

Mr. D. A. R. Crum (Cordele): Are you altogether sure that Savannah is within the State? (Laughter.)

Mr. P. W. Meldrim (Savannah): When I get here, and find such charming companions as my friend Crum, I vote that we are very much in Georgia.

Mr. I. J. Hofmayer (Albany): The attendance here is too small to pass on a matter of such importance. In view of the fact that we have already appointed a Commission to consider this matter thoroughly, I move that the resolution be laid on the table.

This motion was seconded, but, when put to vote, was lost.

Mr. W. H. Barrett (Augusta): The resolution, as I understand it, is to commit us absolutely to the abolition of the city courts? Is that correct?

Mr. J. H. Merrill (Thomasville): I am afraid my brother did not get the latter part of it, which provides that we shall multiply the Superior Courts to take their place.

Mr. W. H. Barrett (Augusta): It seems to me that it would be just as much a mistake to say that we are in favor of a particular single change of so radical a nature without knowing how the general plan is to be worked out, as if we took any other particular subject and wiped it out without some consideration of the whole scheme. It does seem to me that the wise course to pursue—because if we are all in favor of abolishing the city courts, the Commission will be in favor of it—is to let them take that into consideration together with a general scheme to adopt a different plan of judicial procedure in Georgia. I think it ought to be referred.

Mr. E. E. Cox (Camilla): I am impressed with the idea that this problem is never going to be worked out satisfactorily until responsibility is placed upon somebody, and I understand the purpose in naming this Commission is to put the responsibility of devising some satisfactory plan with reference to the present system upon that Commission, and, that being true, I favor the suggestion, as made by Mr. Meldrim, of Savannah, that that Commission ought not to be embarrassed by any resolution passed in this way by this Association. I think it would be a mistake to attempt to instruct them.

The motion by Mr. Meldrim that the resolution be referred to the Commission was carried.

The President then called upon Judge W. R. Hammond, of Atlanta, for his paper, but as the hour for adjournment had arrived, Judge Hammond asked to be excused.

Mr. P. W. Meldrim (Savannah): I move that Judge Hammond be requested to present his paper at the next annual session of the Association at such hour as will be most agreeable to him.

This motion was seconded and unanimously carried.

The President: I wish to make the following appointments:

Committee on Legislation:
Alex. C. King, Atlanta.
C. E. Battle, Columbus.
W. H. Bartlett, Augusta.

Delegates to American Bar Association:
T. M. Cunningham, Jr., Savannah.
W. K. Miller, Augusta.
Orville A. Park, Macon.

Is there any further miscellaneous business? There seems to be none. I declare the twenty-eighth annual meeting adjourned sine die.

APPENDIX.

APPENDIX A.

TREASURER'S REPORT.

Z. D. Harrison, Treasurer,
In account with the Georgia Bar Association.

	Dr.	Cr.
To balance June 8, 1910	$ 700.81	
To collections since June 8, 1910	1,745.00	
By voucher No. 1. Hon W. M. Ivins		$ 126.15
By voucher No. 2. Com. on Legislation		100.00
By voucher No. 3. Edward Crusselle		60.25
By voucher No. 4. J. W. Burke Co.		695.60
By voucher No. 5. J. W. Burke Co.		89.78
By voucher No. 6. Byrd Printing Co.		25.50
By voucher No. 7. D. Witman		10.00
By voucher No. 8. Discount on drafts		21.30
By voucher No. 9. Salary of Secretary		300.00
By voucher No. 10. Salary of Treasurer		150.00
Balance May 31, 1911		867.23
	$2,445.81	$2,445.81

Examined and approved by Executive Committee, May 31, 1911.

E. R. BLACK, Chairman.

APPENDIX B.

REPORT OF COMMITTEE ON INTERSTATE LAW.

Mr. President: The Committee on Interstate Law beg to report, that under the By-Laws of the Association, it is the duty of this Committee to bring to the attention of the Association "such action as shall be proposed looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest."

The present Committee cannot do better than refer to the very excellent reports of the former Committees on Interstate Law, made to the Association at its meetings in 1909 (Report, page 70) and 1910 (Report, page 212). From these, it would appear that uniform laws upon several subjects of common interest have been passed by many of the States,—such as the Uniform Negotiable Instrument Act, the Uniform Warehouse Receipt Act, the Uniform Sales Act, the Uniform Transfer Act, Uniform Bills of Lading Act, Uniform Partnership Act, besides others.

Your Committee understands that bills similar to these have from time to time been introduced into the Georgia Legislature, but as yet none of them have met the approval of that body, nor has the Legislature, so far as your Committee are informed, made any appropriation to defray Georgia's share in the expenses of the Conference referred to in the report of the Committee of 1910 (See report of 1910, pages 27 and 214).

Your Committee assume that the recommendation of the Committee of 1910, that copies of their report, together with the uniform bills in question, should be transmitted by the Secretary of the Association to the Commissioners on Codification, was complied with, but as the Code of 1910 fails to contain any part of said proposed uniform laws, they assume that the recommendations did not meet the approval of the Committee on Codification.

All of which is respectfully submitted,

W. K. MILLER, Chairman.

APPENDIX C.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Mr. President: The subject in hand has been heretofore so fully and ably discussed by the committees appointed for that purpose that little or nothing can be said which is not a repetition of what has already been published in the Association's reports. Your Committee is in thorough accord with the ideas expressed and the recommendations made by the Committees of 1906, 1908, 1909 and 1910. The report of the last Committee contained two recommendations. First, "That the applicant for admission to the Bar must have satisfactorily completed the high school curriculum, or successfully stand an examination on such work." Second, "That he must prove to the satisfaction of the board of examiners, that he has in good faith studied law for a full period of two years, before he can take the bar examination." This recommendation was, upon motion of Mr. Douglas, unanimously adopted by the Association. It was further suggested in the paper then read by Mr. Thomas F. Green, that no person under twenty-one years of age should be eligible to admission to the Bar.

The present Committee, in the light of these recommendations, has taken some pains to examine the laws of the various States and Territories as compiled by the West Publishing Co., in a volume entitled, Rules for Admission to the Bar, in the Several States and Territories of the United States, in force January 1st, 1911. The law of every State and Territory in the United States, with the exception of Georgia, the District of Columbia, the Hawaiian Islands, Kansas, and Pennsylvania expressly requires that the appli-

cant for admission to the Bar shall be twenty-one years of age. It would seem to be unnecessary to add any further argument to this overwhelming weight of evidence in favor of this recommendation of previous committees. When we reflect that members of our profession devote a long life to the study of law and yet in the end are forced to confess that there are so many things about the law which they have not learned, it would seem to be a reasonable requirement that no person should be permitted to hold himself out to the world as being qualified to perform the high duties of the legal profession until he has at least attained his majority. We are reminded of a colloquy between a Justice of the Supreme Court and a young man who had just arrived at majority, fresh from one of our law schools, who applied for admission to the Bar of the Supreme Court of the State. After having been admitted to practice in that august tribunal, upon taking the oath prescribed by law, one of the justices propounded to the attorney this question: "Young man, are you a lawyer"? to which the attorney, with great confidence unhesitatingly replied, "I am." The old justice dropped his head for a moment and finally said, "Sir, it has been a long time since I was admitted to the Bar. During all this time I have been actively engaged either as a practitioner or serving upon the bench, and I have not yet been able to reach the conclusion that *I* am a lawyer." The justice spoke truly; the more experienced the practitioner becomes, the wider the vista of unexplored territory in the realm of law. It surely is not asking too much that infants should be excluded from the privileges of the profession.

In the fifty-three States and Territories, the laws of which have been examined, twenty-six require a three-years' course of study either in the office of some reputable and experienced attorney or at a recognized law school, eleven require a course of such study covering a period of two years. One (California) requires a four-years' course of study. One (Alabama) requires an eighteen-months' course of study, and fourteen have no requirement in this respect, except that in some of these States it is left to the discretion of the ex-

amining judge to determine whether the course of study pursued by the applicant has been of sufficient length and scope. Practically all of the States and Territories of the United States require at least a completion of such curriculum as is furnished by the ordinary high schools of the country. Some few of the States require literary attainments such as can be obtained from a course of study in some recognized college, or satisfactory examination in the branches of a college curriculum. Georgia lags behind most of the States in the matter of requirements of admission to the Bar and legal education. Indiana presents a remarkable exception to the general rule. In that State, the provision is that every voter of good moral character shall be entitled to practice, and it is stated in the compilation of the rules for admission to the Bar above referred to that "the examinations are usually oral and of brief duration. No examination as to legal attainment can be made over the objection of the applicant." Thus it seems, that in Indiana a lawyer need have no qualification except that he be a voter and of good moral character, and the Supreme Court of that State has held that this provision of the Indiana constitution does not exclude women. It is indeed a strange provision of law, that one need have no education, either legal or academic, to become a lawyer. Georgia is not so liberal as Indiana, but requirements for admission to the Bar in nearly all of the other States and Territories are more rigid than those of Georgia.

There can be no sound argument advanced against the requirement that an applicant for admission to the Bar should at least have acquired such a general education as to admit him to the freshman or a higher class in the leading colleges of the State, or have completed a full four-years' course in a high school of approved standing, or hold a certificate or diploma recognized as equal to the diploma of such high school, or be the holder of a first-grade teacher's certificate in this State, or a certificate of a higher grade, or unless he shall stand a satisfactory examination to show that he has attained such a general education as would be indicated by

such a diploma or certificate. Such is the requirement of the law of the State of Washington, and many of the other States and Territories contain a similar provision. The laws of some of the States go more into detail and prescribe branches upon which the applicant shall be examined; thus, Delaware requires an examination in language, modern geography, higher mathematics, United States and ancient history. Illinois requires a three-years' English course consisting of algebra, geometry, ancient history, physiology, rhetoric, physics and physical geography, each one year; in bookkeeping and English composition, one year; mediæval and modern history with English and American literature, one year. In Massachusetts, the applicant must show a certificate of graduation from a college or high school or must pass a successful examination in language, history, civil government, geography, either Latin or French, algebra or plane geometry, in two of the following: physiology and hygiene, physics, chemistry, botany, physical geography. New York requires an examination under the supervision of the State University, in English three years, mathematics two years, Latin two years, science one year, history two years, or their substantial equivalents.

It is safe to say that no man can become thoroughly grounded in the law and be a well equipped lawyer, unless he has a general education at least equal to proficiency in the branches above mentioned. Without the foundation afforded by the ordinary high school training, it is practically impossible for one to become a first-rate lawyer, for the time that should be devoted to the law must be expended in acquiring an education in the elementary branches of an English education. The problems daily confronting the lawyer are intricate and difficult of solution and the better foundation he has in the matter of general education, the easier it will be for him to master these problems. It is to the interest not only of our profession, but of the people at large that the standard should be raised. Indeed, it is of vastly more importance to the client, that lawyer should be the synonym for both learning and integrity. We

believe it would be wise, and we join in the recommendation of previous committees, that the law of Georgia should be so changed as to require at least a two-years' course of study under the tutelage of some reputable and experienced member of the Bar, or at some approved law school, together with evidence that the applicant has completed a general course of study at least equal to the curriculum of the approved high schools of the State, or such a course of study as would qualify the applicant for admission to the freshman or a higher class at the State University. We believe that the standard of the Bar ought to be elevated until it has reached that point where no man can find entrance into the profession who is not qualified to grasp the fundamental principles underlying the law and to understand and appreciate these principles in their relation to human affairs.

Every State and Territory of the Union requires that an applicant for admission to the Bar shall be of good moral character. In Georgia, the applicant must furnish the certificate of two practicing attorneys that he is of good moral character. This is the only evidence required. It seems to us that there ought to be some provision for a more diligent inquiry into the moral character of the applicant and better proof thereof than the mere certificate of two members of the Bar. It is difficult to put this suggestion into concrete form, but the law might make some provision for the filing of objections by any member of the Bar and give the examining judge the right to enter upon an investigation as to the character of the applicant, with power to reject his application if it should appear that his character is such as to make it probable he would not become a worthy and honorable member of the profession.

The Bar ought to struggle against the spirit of commercialism which is invading our ranks. We are not a money-making profession. We have gotten too far away from the honorarium of the early members of the profession. The young lawyer of to-day ought to be taught more of the ethics and the ideals of the profession. He ought to be

thoroughly imbued with the nobility of his calling and the high principles which lie at its foundation. To this end, it is suggested that all applicants for admission to the Bar be required to stand a thorough examination upon the subject of legal ethics. We believe it would not be unwise to require each applicant to be examined upon the Code of Ethics of the American Bar Association, which was adopted by the State Bar Association in 1909, and he should have a thorough knowledge of those provisions of our law which relate to the duties between lawyer and client.

Your Committee is further of the opinion that attorneys of other States who apply for admission to the Bar ought at least to stand an examination upon the Code of Georgia, show a familiarity with our practice and procedure, and furnish evidence of such general education as may be required of applicants from our own State. If this be not done, we practically adopt the law of every State in the Union from which applicants may come, and thus for example, we may have admitted to practice here a lawyer from Indiana whose only qualification is that he is a voter and of good moral character.

As stated in the beginning, this paper is in the main a repetition of what has been said before and your Committee again recommends that the Association take some definite action upon these suggestions which have been made from time to time, to the end that they may be incorporated into the law of our State.

Respectfully submitted,

J. R. POTTLE, Chairman,
GEORGE S. JONES,
JOHN T. NORRIS,
HAMILTON DOUGLAS,
H. A. ALEXANDER,
Committee.

APPENDIX D.

BREVITY AND REFORM.

ADDRESS OF THE PRESIDENT, JOEL BRANHAM, OF ROME.

Gentlemen of the Georgia Bar Association: In advance of the address which, under the rules of the Association, the President is required to make, let me return thanks for my election to this important office. I am the more deeply grateful for the honor because it occurred in my absence and was unsolicited and unexpected. As further evidence of my gratitude, I shall endeavor to illustrate the subject I have chosen for the address,—Brevity and Reform—by conforming as far as possible to the suggestion, and I shall try not to weary you.

Two old maiden sisters, who had lived together many years, made their joint will substantially as follows: "We, Jincey and Patsey, do agree that, for the love we bear to each other, whichever of us may be the longest lived, shall be the heir of the other." Held a valid will. Opinion by "Old Rock." Evans vs. Smith, 28 Georgia, 98.

Mr. Tilden's will, an elaborate instrument, drawn by him with great care, was held void.

A law book concern advertises three miles of law books, and also five thousand shelf-fillers, at twenty-five cents a volume. We have law books before us, behind us, above us, below us. Books, books, everywhere and hardly time to think. Chief Justice Baldwin, of Connecticut, says: "The multiplication of distinct sovereignties in the same land, each fully officered, and each publishing in official form the opinions of its courts of last resort, bewilders the American lawyer in his search for authority." The making of law books has become a commercial business. They exceed the

length of the longest purses and require extra help and space for storage. They are so numerous and conflicting that they are becoming unavailable. We should have a bon-fire.

It is the age of stenographers, typewriters and interminable talkers, whose crude and half-formed thoughts deface much paper, of long transcripts, briefs and arguments full of irrelevant and immaterial matter, elaborate judicial opinions loaded down with citations and abounding in obiter, of long Bar Association papers burdened with statistics, quotations and references which increase their length and dilute their strength, serving mainly to swell the annual volume as they repose undisturbed among its leaves.

An idea briefly expressed is the strong one. For example, a modern method in defining thought runs thus: "How wonderful is thought! how mighty! how mysterious! It flies with lightning speed over land and sea, through the skies, among the stars, traversing the universe. It eliminates time and space." Hobbs, whose philosophy identifies thought with sensation, expressed the whole in three words, "Thought is quick."

Judge Bleckley, when overburdened with work, once said: "I haven't time to write short opinions." Clearness, accuracy, and strength in composition demand brevity, and brevity can not generally be obtained without the use of both ends of the pencil. In many cases, it is at least advisable to shorten productions.

At the close of the war between the States, Hon. John W. H. Underwood and Mr. William A. Fort, both most excellent and intelligent men, full of wit and humor, and both of whom had refugeed, on the approach of Sherman's army, from Rome to Middle Georgia, were returning by private conveyance, disconsolate, to their former homes. At the close of the day, as they were nearing the house of an old friend, near old Van Wert, being thirsty, they determined to stop over night with him, provided he could furnish them with such drink as was needed to allay their thirst. They found him sitting on his front verandah, with

his feet on the rail, intently reading a newspaper. The Judge hailed him and inquired whether they could stay over night with him? "Certainly," he said. "Have you anything to drink?" said the Judge. "Yes," he answered, "light and come in." When they reached the verandah, he handed the newspaper to the Judge and asked him to read the balance of the article to him. The Judge drew up the chair and read aloud, while Fort walked restlessly up and down the verandah. After the Judge had read for some considerable time, Fort stopped, and, looking over his shoulder, saw that there were four columns still to be read. The time required for it under the circumstances was more than human nature could bear; thirst had become unendurable. Fort leaned over the Judge's shoulder, and, with his hand to his mouth, whispered, "Skip some, John, for heaven's sake, skip some." The Judge cheerfully obeyed, and the three were soon refreshing themselves in happy forgetfulness of the adversity which had fallen on the country. Possibly some of us, on these long hot days, may profit by the point of this anecdote.

We haven't time in this strenuous and busy age for useless words and phrases or elaboration. We are requested to omit the word "please" when using the 'phone (no longer called the telephone). It is the day of abbreviations in writing and in speech. The names of the month and the century on letters and accounts are gone. It is 6/15/11. Be brief, speak quick, be alert as you move, or you will be ignored, run over or killed. In this progressive age people will not suffer torture from long, loose, senseless tongues. There is a main, central point to which every case or question must ultimately come. The purpose of discussion is to elucidate it. It is the kernel of the nut, the bull's eye of the target; cast away the shell of the nut and disregard the outer circles of the target. Immaterial matter, needless words, and attenuated argument tire the listener and defeat the object of the speaker; and the reader grows weary and inattentive in searching for the truth through

voluminous and confused papers until his thoughts wander like aimless ghosts seen in disordered dreams, with outstretched hands groping in the shadows of the night.

As a rule productions end in a climax. You may shorten them by putting the climax in the front of the paper or speech; or, if possible, by omitting it altogether; and also by omitting all passages and figures outside of the main thoughts that strike your own mind as being exceedingly fine. Don't try to exhaust the subject if you are a mere lawyer; if you are more, such as a judge of a court of last resort, for instance, do not try to cite or review all the authorities, or to reconcile your own conflicting opinions. Come to the point, shoot straight or give up your gun.

The report of the Committee on Jurisprudence, Law Reform and Procedure, of which Judge Cobb was Chairman, made at the last session of the Association, recommends that a permanent Commission on the Revision of our Judicial System and Procedure in the Courts, to be composed of not less than eleven members of this Association, and to be selected in such manner as the Association may determine, shall be appointed to "Formulate a Judicial System for the State and a System of Procedure in the Courts." This report on the motion of Mr. Alex. C. King, who is now Chairman of that Committee, was set for definite action at this session, immediately after the conclusion of the President's address. The subjects, as will be seen, are very broad; they involve our entire judicial system as well as procedure in all our courts. It may not be amiss, therefore, to call attention to some of the changes or reforms suggested in the report and embraced within the scope of the recommendation. If I should add my own objection or approval to some of them as I name them, I hope I will be pardoned and allowed the privilege of withdrawal, if, after discussion or on mature consideration, I should become convinced of my error. An oral statement or opinion is easy to explain or deny; but when one's own sign manual on either a political or legal question is drawn on him, there is but one thing for a modest and inexperi-

enced man, such as I am, to do,—admit or withdraw. "Oh, that mine enemy had written a book," a remark said to have been made by an unfortunate man, when in a dire strait, several thousand years ago. Judge Augustus R. Wright, late of my city, an eloquent, brilliant and lovable man, but impulsive and emotional, often indulged in the expression of his own opinions through the press over his own signature; and, as a consequence, was often caught in inconsistencies and contradiction. This gave "Billy Woodpile," a humorous author of that day, the opportunity to write his famous letter to him which concluded with the advice,—"Say what you please, Gus, but eschew stationery."

Possibly the President, and the judges of the Supreme Court, in dealing with the Rate, the Joint-Traffic, and the Standard Oil and Tobacco cases, might have escaped much embarrassment, and, at least, seeming inconsistency had they been mindful of this wise suggestion.

Regretful consequences often follow the careless use of stationery. The omission of a single qualifying word from a sentence of a judicial opinion frequently leaves a bald declaration to confront and discomfort its author whenever similar questions afterwards arise. Many more erroneous decisions result from exclusion than inclusion of qualifying words and phrases.

But few of us can plead youthfulness in extenuation of our own carelessly expressed or erroneous views. It is said John Randolph worked several years on an important manuscript, and when he had about completed it, on being called to supper, he left it on his office table with a lighted candle near it. He also left his little dog Fido, of whom he was very fond, asleep in the room. While he was at supper Fido, in search of his master, hopped upon the table, overturned the candle and set the manuscript afire. Randolph, on his return to the room, seeing the destruction of his work and the loss of his long and painful labor, did not repine or complain; but quietly extinguished the flames, bundled and tied up the burnt fragments of his manuscript

and labelled it, "Done by Fido when he was a puppy." These anecdotes have no personal bearing whatever; they are only designed to pave the way to a free and unbiased discussion of the subjects before us.

The report of the Committee, above referred to, recommends a thorough revision of our judicial system and procedure in the courts from bottom to top.

To begin at the bottom, what shall be done with the justice courts? Shall they be abolished? In the rural districts and smaller towns, not yet; in the larger cities, yes. Shall the justices of the peace, when these courts are retained, be put on salaries? Provision might be made for the discontinuance of these courts and the substitution of others of greater dignity whenever the increase of population or other circumstances may require it. What system shall supersede the justice courts in the larger cities, a single court, or several with a central head as suggested by Mr. McElreath in his interesting paper read at the last session?

Shall the city courts be abolished? Five years ago, when we had but fifty-five of these courts, a report of a committee of this Association recommending their abolition was derided and denied even decent burial. Now, however, public sentiment seems to be drifting the other way. A number of them have been abolished. We now have seventy-six of these courts, differing in jurisdiction and procedure, and the Legislature at each successive session adds to the number. They should be superseded by superior courts, or, what would be better, by county courts of uniform jurisdiction and procedure, under general law, limited, in civil suits to small sums, and in criminal cases to minor misdemeanors, *to be prosecuted on information only*, and the judges of such courts should be *required* to try all such cases without a jury unless a jury should be demanded by one or the other of the parties.

Excepting justice courts, county courts and courts of ordinary, shall we have only superior courts of uniform original jurisdiction? Yes, excluding from the jurisdiction of such

courts small civil suits and minor misdemeanors as above stated, and we should have as many such courts and judges thereof as may be needed.

Shall we have separated courts of such character of civil and criminal jurisdiction?

Shall the Court of Appeals be abolished, or merged into the Supreme Court, and three additional judges added to that court, so as to have, except as to small civil suits and minor misdemeanors, which should end in the Superior Courts, only one court of last resort? Yes, by merger of the Court of Appeals, as now officered, into the Supreme Court.

Shall jurisdiction and procedure in justice courts, county courts, and superior courts be uniform? By all means.

Shall courts be prohibited from directing verdicts in proper cases? No!

Shall the "Dumb Act" be repealed and the court allowed to advise the jury on the facts, as well as the law of the case, leaving the facts to be ultimately determined by the jury? Yes.

Shall the special demurrer, which teaches the reckless and unskilled lawyer how to plead, and his client how to swear, be abolished? Yes, of course.

Shall capital punishment be abolished? No. I remember the climax of a forcible argument made by Col. I. W. Avery, one of the noblest and bravest of men, of General Wheeler's staff, in a debating society in my home town of Eatonton, when we were boys. I was opposed to him in the debate. He said, "Mr. President, we don't hang a man because he kills another in self-defense; we don't hang a man because he kills another in defense of his father or mother or wife or child or brother or sister or even of a stranger, sir; we don't hang a man because he kills another under just provocation in the heat of passion on sudden impulse of the moment; we don't hang a man because he kills another in defense of his home or of his property, sir; but when a man, without cause, provocation or excuse, and with malice aforethought, takes the life of his neighbor he ought to die and go to h——l."

As suggested by Mr. W. W. Gordon, Jr., in a strong paper read at the session of 1906 of this Association, the pardoning power, as a rule, should be limited to matters "dehors the record" and to "extraordinary" conditions arising after the trial. The Pardon Board should not be permitted to act as an *ex parte* reviewing court. Of course there are occasional exceptions to all general rules. I remember well the eloquent speech of the late Senator Benjamin H. Hill, made in such a case, in 1859, before the General Assembly, on the pardon of William A. Choice, in overriding the veto of Governor Joseph E. Brown, when the pardoning power was vested in the Legislature and the Governor. It was a great speech of a great man. (See Acts 1859, pages 406-8; Acts 1860, page 205.)

The case is reported in the 31st Georgia Reports, page 424. After a fair and impartial trial, red-handed murderers should have no opportunity to stir up sickly sentimentality or sympathy, but they should be led away to die in secret as the enemies of the human race.

Shall we have continuous terms of our courts, with monthly rules days for filing pleadings, and stated times for trials thereafter, or quarterly sessions?

When shall judgment in default cases be rendered?

How shall the judges be elected? By popular vote of the State at large, or of the judicial circuit, by the General Assembly, or nominated by the Governor, or (except Supreme Court judges) by the Supreme Court and the Governor, subject to ratification by the Senate? I have lived to see all these methods (except Supreme Court nominations) tried and abandoned, and my judgment is that nominations by the Governor, subject to the ratification of the Senate, is the better method, and that popular election is the worst. Selfishness is a law of life. Adam Smith said it should not be abolished but enlightened. It can not be destroyed, therefore we are taught to pray, "Lead us not into temptation, but deliver us from evil." Many judges withstand temptation, and rule with firm and impartial hands, but they do so at the risk of being superseded by less worthy men.

Shall the "Iron Clad" rule which prevails in the Supreme Court and which allows a verdict to stand on a mere scintilla of evidence, be repealed? Yes.

Shall the Initiative, Referendum, and Recall prevail? No. Heaven defend us, this is the very worst of all! It is the refuge of irresolute legislators, the hope of the Socialist, and the battleground of the demagogue. It obliterates constitutional limitations, imperils the rights of the minority, destroys the independence of judicial officers, panders to the passions of the mob, dethrones the majesty of the law, and opens the Court of Chaos where we shall find, not relief or peace, but "confusion worse confounded."

We have before us such a multitude of questions, so many conflicting views and shades of opinion on many of them, that they seem almost as difficult of solution as the question propounded by that brace of wits, McDermot and Longworth, in Longstreet's debating society, "Whether at public elections should the votes of faction predominate by internal suggestions or the bias of jurisprudence"; or that submitted in the Ollipodiana by Bob Edwards, "Whether a chimera ruminating in a vacuum devoureth second intentions." However, such as can not be satisfactorily solved, as in these two great debates, will have to be abandoned, and we will have to abide the situation until time and circumstance and better days shall force the needful changes on the people.

The doctrine of "Harmless Error" seems to be generally accepted as the remedy for the law's delay. Much labor and many technical questions might be avoided by dispensing with the service of Rules Nisi in motions for new trials and in bills of exceptions, and by shortening the procedure in taking cases to the Appellate Court, for instance, by the payment of cost and giving appeal bonds as in ordinary appeals. Attorneys and parties should be required to follow their cases, when once in court, without further notice or service, through to the end. In all cases, carried to the Appellate Court, a printed copy of the record, certified by the clerk, should be sent up. The Harmless Error rule, within cer-

tain limitations, as recommended by the American Bar Association, and adopted by the New York Bar Association, was passed, as to Federal practice, by the House of Representatives on the 6th of February last. It is as follows:

"No judgment shall be set aside or reversed or new trial granted by any court of the United States, in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require." This statute requires "an examination of the entire cause," which necessarily includes the evidence, and it requires the Appellate Court to decide whether the judgment or verdict, under the law and the evidence, is right or wrong. It must therefore extend to the affirmance as well as the reversal of judgment, though the word "affirm" is not contained in the statute.

Oklahoma has a brief and comprehensive statute on the subject. It provides that "On appeal the court must give judgment without regard to technical errors or defects or exceptions which do not affect the substantial rights of the parties." It is imperative and requires a review of the evidence.

Wilson's Rev. and Ann. St. of Oklahoma, 1903, Sec. 5618.

The relative provision of our law is contained in the Code of 1910, Sec. 6205. This section authorizes the court to give such direction to the cause in the court below as may be consistent with the law and justice of the case. It is not imperative and it does not prohibit the disposition of cases

on technical grounds. Many cases, to the denial of justice, have been dismissed or disposed of and are still being dismissed and disposed of on technical grounds, notwithstanding the constant struggle on the part of the Bar and the General Assembly with the Appellate Courts to prevent it. See Code of 1910, Sections 6177 to 6187, inclusive.

The two rules first referred to require the court to review the entire record—the evidence as well as the law of the case. This is necessary to the ends of justice. It is hard to see how substantial justice can be done in any case without a full and accurate understanding of the facts. When the facts are once grasped and fully comprehended by the court, the application of the law is easy. Judge Martin J. Crawford, while he was on the Supreme Bench, told me that the burden of his labor in deciding cases was in the verification of the facts by the record. Under existing procedure this is dreadful labor to the Appellate Courts. It seems to me, if this court, in the average case, would require counsel for the plaintiff in error to state orally the points of his case, and counsel for defendant in error to state orally the points of his defense (having the printed record before them) and follow up such statements with concise oral statements of relative facts and brief oral arguments, confining counsel, as far as possible, in the argument to the issues so stated, a majority of cases could be promptly and satisfactorily decided, short decisions rendered and noted by the court stenographer, and the labor of the court greatly lessened. This method was successfully followed by one of our Superior Court judges in deciding motions and certioraris in his court. He would say to the plaintiff, "State the substance of the suit and of the answer and your points of exception," and then he would call on adverse counsel to verify, correct or amend such statement, and so, without the labor and loss of time in reading the record, he would grasp the facts and issues, generally hearing from counsel on one side only, and decide the case. Searching voluminous and confused records for the material facts, fatigues and wears out the strongest judges.

If the "Harmless Error" rule is to be enforced in the Appellate Court, it will be necessary to lessen, in some way, the number of cases carried to that court. This could be done by limiting the jurisdiction of that court in civil cases to those where the amount involved exceeds five hundred dollars; and in criminal cases, where the penalty exceeds one hundred dollars, and by making the Superior Courts by certiorari from inferior courts and by review in their own as to such cases, courts of last resort; and to allay the fears of attorneys and suitors, who may lack confidence in the ability or integrity of their own judges, by providing for the appointment of two special judges (who might also try disqualified cases) to sit, when demanded, with the judge of the circuit, at stated times and places, to hear and determine such cases. All such cases should be heard on the original record and there should be a prohibition against the delivery or publication of written opinions. In many cases the Federal Court of Appeals is a court of last resort. Most cases appealed end there and cannot be taken to the Supreme Court. In such case it would be necessary to re-adjust penalties in criminal cases and to define more clearly the distinction between felonies and misdemeanors, or possibly it might be well to authorize the jury trying the case to fix the penalty, in each case, within the limits of the general rule prescribed by the Code of 1910. Vol. II, Sec. 1039.

Whatever may be done as to jurisdiction and procedure, the whole must be—

A complete and orderly system;

It must be uniform;

It must be brief;

It must be clearly and accurately expressed.

Such is the limit of the human mind and the fallibility of human language that it is hardly possible to reach perfection in the best considered and most carefully drawn acts.

On account of the failure of justice in many cases, and the steady increase of crime, all agree that "something must be done." What shall it be? We should not undertake

too many changes or espouse measures too radical or chimerical, lest we overleap our aim and fall into the pit. We must "keep probability in view," endorse and advocate such practical measures as are likely to meet the approval of our electors. We have before us the difficult task of amending the constitution, which requires a two-thirds vote of the General Assembly and a majority vote of the electors. If we abolish the Court of Appeals, the city courts and the justice courts, without more, it will require an executioner's basket of vast dimensions to hold the heads of decapitated officials, and we shall meet with stubborn resistance. In the Court of Appeals, we have three judges, three stenographers, a clerk and a sheriff; in the city courts there are seventy-six judges, besides solicitors, clerks and reporters; in the justice courts, there are fifteen hundred and ninety-eight justices of the peace, there are fifteen hundred and ninety-eight notaries public, elected by the grand juries, who are also ex-officio justices of the peace, and thirty-one hundred and ninety-six constables scattered throughout the various districts of one hundred and forty-six counties; all influential men of their sections, and all of whom will likely be unwilling victims of slaughter. These, with their friends, will stand in formidable array against such a measure. Many able lawyers have surrendered their practice to become judges, and it is no slight thing to cut their offices from under them.

Yet "something must be done;" all agree to that. What shall it be? This is a democratic government, in theory, and in many respects in actual practice. But it is and must necessarily remain a representative government. With a population of ninety million, a pure democracy is an impossibility. Without the surrender of constitutional rights, reserved for the protection of minorities and the liberties of the people, we must, through representatives legally chosen, conform to the popular will. You can not make people morally good by legislation. A statute contrary to the decided sentiment of the public is not law. The North would not observe the fugitive slave law or the Dred Scott

decision, and direful results followed the effort to enforce them. Many sumptuary and Sunday laws for the same reason are inoperative. While these laws should be obeyed, they are not observed because they are not sanctioned by the people. The divine command is to keep the Sabbath day,—the last day of the week, holy, and as a day of rest in commemoration of the creation of the world. The Apostles kept the first day of the week. The Edict of Constantine, issued in the early part of the fourth century, required the observance of Sunday, the first day of the week, to be kept holy in commemoration of the resurrection of our Lord. This was the first legal recognition of the change in the day of the week. Our statute, which follows that of 29 Chas. II, commands us to abstain from all work of our ordinary calling, except works of necessity and charity, "on the Lord's day commonly called Sunday." Yet the railroads, steamships, telegraphs, telephones, gas and electric light plants, all requiring much labor, run unremittingly. The mails go and the band plays, and even our "maid servant," if we are so fortunate as to have one, cooks hot dinners for us on that day. In this progressive and lively age, people can not be induced to stay indoors on a bright Sunday afternoon and contentedly read the Lamentations of Jeremiah. Let no one for a moment suppose that I do not favor a rational observance of the Lord's day. The day of the week is immaterial, but one day in seven should be kept holy and as a day of rest,—rest to the tired part, whether of mind or of body. If the mass of the people sanction a law, and not simply acquiesce in it or give it mere negative support, it will generally be enforced; otherwise its administration is difficult and in some cases impossible. Besides the indifference of the people, we have to contend with ignorance, prejudice, corruption, and a low standard of public virtue in the enforcement of law. The failure of justice is not so much in the insufficiency of the law as in the failure of the public to enforce it. An eminent city court judge has said "the people generally get what they want; if they want the law enforced, it will be done." The standard of

public virtue is too low. The fault lies with all classes of the people, mainly with those high in authority. Judges lacking integrity are rare; some lack efficiency, some the love of labor; more lack independence, courage and firmness, and that spirit of judicial sacrifice and fearlessness that turns a deaf ear to the clamor of the mob, the influence of wealth and friends, and to every suggestion other than the search for the truth and the law of the case. To reach these ends, with the upright judge, labor is no sacrifice and the approval of his own conscience is his greatest reward. There are but few corrupt lawyers; some are not strictly honest with themselves in taking cases and in the conduct of them. Conditional fees and the hope of gain sometimes induce even leading lawyers to violate the ethics of the profession, to go astray and to mislead the client, the judge and the jury, and to meet, as a seeming necessity, what they believe to be the dishonest conduct of adverse counsel and client, with similar conduct on their part. Such things ought not to be. Every client should be permitted to state his case in his own way, without prompting to supply deficiencies in the facts to make a case without real merit. In this day, when parties to suits are allowed to swear in their own behalf, such suggestions to clients tend to defeat justice and end in perjury. As a rule, men swear to petitions and pleas as drawn by their counsel, and to amendments to cure defects, though the additional facts set up by amendment may not be true. In this way, perjury, one of the most difficult crimes to prosecute to conviction, has become rife in the land.

As a rule, on clear and distinct charges, as between man and man, juries render correct verdicts; but the day has not yet come when they, as a rule, can overcome their prejudice in suits against corporations or aggregate wealth in whatever form it may exist. The Bar is largely responsible for this condition; protection in such cases lies with honest and fearless judges of Superior Courts in granting new trials and with courts of last resort in setting aside unjust verdicts. Even counties, towns and cities are often

victims of such prejudice, and verdicts in such cases are often returned that would never have been rendered between neighbors or man to man.

"Something must be done." What? and how shall it be done? These are momentous questions. We should all strive to elevate the standard of public virtue. Let every lawyer, judge, juror and private citizen have a care to elevate his own individual standard. The greatest responsibility is on the Bar and the courts. If they boldly lead, the masses are apt to follow. In London, policemen carry no pistols, and no billies. Their lifted finger is the symbol of the majesty of the law, and none dare disobey. Let us stand firm, not so much for the making of new laws as for the enforcement of the old. Let us "ask for the old paths, where is the good way, and walk therein." "Do justly, love mercy, and walk humbly with thy God." Each of us has his own allotted work to perform. In strength or weakness, pleasure or pain, we must not shrink from it, but face and perform it with a brave and unfaltering trust, such as sustained our own beloved poet, when with pulse at 104, speaking with rare resolution of his own labor, he said:

"I am strong with the strength of my lord sun.
How dark, how dark soever the race that must needs be run,
I am lit with the sun."

To live a useful and honest life, is to live a beautiful life; and the passing of a beautiful life is like a band of music going down the stream. Its delightful harmony breaks in rapture on the ear and expires softly and sweetly as its notes die away on the distant waters; but its inspiring strains linger forever in the chambers of the soul.

To live to mature age is to pass through all the changes of nature and to know its aims, pleasures and pains. The river, born amid the snows of the mountain tops, in the strength of its youth leaps merrily along in the sunlight; in the vigor of its manhood it bursts through the mountain

passes, and flowing through the green meadows sheds its blessing on everything along its banks; until at last it grows old, and, winding its way wearily among the marshes, it sinks into the sands of the shore and finds its grave in the sea. During its whole course its beneficent influence is never lost. So may our lives be, not selfish, but sacrificing, that they may gladden the lives of others, and that the returning light of their lives may make our own radiant and beautiful, never forgetting that

"Unless above himself he can
Erect himself, how poor a thing is man."

APPENDIX E.

THE THREE JUDICIARIES.

PAPER BY HON. DUPONT GUERRY, OF MACON.

As we all know, under our theory of government the supreme power rests with the people. If there are intervals when this is not true, you will always find the people resting more or less unconsciously with the supreme power. They are active in affairs of their own and though differently taught, they have long since learned that absolute acquiescence in the will of the minority from which there is no appeal except to some other minority, is the vital principle of the republic. Should the will of the minority cease to be acknowledged, government would end, for it has been demonstrated that the majority can never be relied on to control, but can usually be relied on to submit. Indeed such submission is the sine qua non of all stable government.

Sometimes majorities temporarily engage in revolution, but they never permanently engage in government.

Indeed, we do not have government even by large minorities, for the minorities nominally in control are really controlled by their own minorities which numerically are usually very small. The rule is government by a minority of a minority.

Justice is the chief if not the only legitimate end of government, and would insure the only equality attainable among men. They are suffering more for justice than for paternalism or philanthropy. The unfortunate and degenerate are better provided with alms, than the self-sustaining and useful are with protection for their rights.

It is easier and more common to be generous than to be just. A man always just is always right, but a man may

be always generous and always wrong. To be more than just in one direction is to be less than just in the other.

The administration of justice, though of necessity imperfect, is government in its last analysis and highest usefulness, and speaking sociologically, there are three institutions notably engaged in it, from different standpoints and in different ways and degrees of effectiveness.

1st. The Courts.

2nd. The Press, which includes all printed publications.

3rd. The Clergy, which represents the churches and their connections.

THE COURTS.

Our course, the only tribunal organized for the administration of justice is the legal judiciary, and that so far has been limited to justice according to law.

The New Nationalists and other critics think it antiquated mechanism engaged in "mechanical jurisprudence," because it still contents itself, as a rule, with declaring the law as it is, as the duly expressed will of the people, as best it can under changed conditions and awaits such changes of the law as the people may make by legislation, refusing to violate the law in order to accommodate it to such conditions.

Our Federal and State Constitutions which constitute our Magna Charta and which have so long been cherished as the safeguards of our freedom, these critics denounce as the shackles of a new slavery and submit in support of their indictment as their principal evidence the recent judicial decisions in which the courts in obedience to Constitutional requirements refused to allow some people to take the money of some other people without due process of law.

The technicalities, delays and miscarriages of justice of course draw the fire from these blunderbusses, and it must be conceded that reforms on this subject have been and are entirely too conservative. These critics, however, charge a negligible share of the blame to faithless jurors,

corrupt witnesses, morbid sympathisers, or erring executives. They seem to hold the law and the judges and lawyers chiefly, if not entirely, responsible.

Some of these clamorers cannot understand the difference between a technicality and a vital constitutional provision, or why there should be any deliberation in a trial, and a few of them are stupid enough to say that they do not think a guilty man should be allowed any trial at all.

The more dangerous contention, however, is that of the New Nationalists, who averse to the stability and uniformity of the law, wish the judges to decide cases as they arise uncontrolled by legislation and precedent, which is but to say according to their own views of what is just.

Notwithstanding established rules and the light of precedent for their guidance, our judges now differ so frequently and greatly as to much impair their individual and collective efficiency.

If put to sea, however, without chart or compass, obeying the trade-winds of communism, partisan politics and sectional interests in their different regions, what greater contrariety and confusion, collision and disaster would ensue!

Strangely enough, these agitators tell us that it is the office of the judge to enforce the will and sense of the people, but do not point out where their will and sense are to be found, unless as contained in the constitutions they have ordained and the laws they have enacted.

Possibly, however, we might find them, if we chose, concentrated in these agitators themselves, who seem to be the representatives of the people on a new principle of natural selection or that of the upheaval of the fittest.

Righteous and essential civic law, is germination and growth, rather than invention and manufacture; evolution under Providence rather than creation by man.

The real value of legislation, whether constitutional or statutory, is realized in recognizing, guiding and controlling such growth and in maintaining its adaptation under changing conditions.

Our forefathers in reversing the prevailing theory of government, sought not only to strike the shackles from individual men, but to fasten them upon collective power, and it was natural for them to make meager provision for subjecting the Constitution to alteration.

The provision for amendment requires two-thirds of both houses of Congress to propose amendments or on the application of two-thirds of the Legislature of the States to call a convention for proposing amendments, and their ratification by Legislatures or conventions of three-fourths of the States is necessary to make them parts of the Constitution.

That there should be after so much general growth and heterogeneous development, impatience for an expansion of police power is natural, but salutary relief must be found in the method prescribed by the Constitution, and not in creative or amendatory construction.

Should the judiciary construe the Constitution and laws in accordance with unauthoritative and inconclusive indications of public sentiment or their own wishes, we would soon have an end of government by the will of the people duly expressed.

This would not be national progress, but national reaction; it would be abandonment of enlightened government by established law, and measurable return to barbaric rule by ever changing views, of ever changing rulers.

Of course, Mr. Roosevelt and his followers have the right to criticise judicial decisions. So had Mr. Jefferson, as well as Mr. Lincoln. So has and so will ever have every American citizen. It is worthy of note, however, that Mr. Jefferson and his concurring contemporaries who best understood and were most imbued with the original spirit of the government, made their complaints on diametrically opposite grounds. They thought that the judiciary of their day were not construing law, but constructing it in violation of their oaths of office and deserved impeachment.

Chief Justice Marshall and his associates are glorified for having created the Constitution in large part by means

of liberal construction. Conceding to them full credit, it may nevertheless be due to our Jeffersons and Taneys, that we have any Constitutions at all, and the so-called strict construction decisions of to-day may only be marking out the final boundaries in which there is to be no legislative or executive invasion.

This is real progression. Judicial legislation, of which we have had and are still having enough, is retrogression.

The judiciary, while a creature of the people, is not their agent in the same sense that the Executive or the Legislature is their agent. It is the administrator of justice under the law, between coördinate branches of the government, between the people and the government, between the States and among all the people in all the States, and between the States and their citizens and foreign States. Should it be a mere agent of the people, it would under the workings of our system be such for the time being, of the party in power.

It is all that is left us that is in any hopeful measure above party. Our American system of popular government has not finally passed the stage of experiment, and its safety and permanence rest upon the comparative independence of the judiciary.

The provision of the Constitution of the Confederate States for its own amendment, allowing the call of a convention and the proposal of amendments by three States, their submission by a majority of the States and their ratification by two-thirds of the States, was progressive and wiser than is that of the Federal Constitution.

Indeed, the many material differences between the two instruments are practically the amendments now needed by the original Constitution.

The criticism of Carlyle, that a written Constitution "does not march" so as to keep up in the progress of civilization, is somewhat justly applicable to the latter, as the provision for making it march is not sufficiently available. But we must at least be patient with our forefathers and

respect, if not appreciate, the rich legacy they left us, and must conform to its terms as we enjoy its blessings, and not resort for relief to judicial perjury or popular revolution.

It is true, as we are oracularly advised, that after all we must have government by men, but let it be by men under law and not by men above law.

The Bar supplies the Bench, and is its public cabinet. The members of the Bar are members of the court.

The lawyer is not the product of license or enactment, but of social evolution. When society advances far enough to have rules for the regulation of its members and itself, it must have rulers to formulate and enforce these rules as they develop or are enacted and others to advise and assist these rulers. These advisers and assistants are lawyers whatever they may be called. All departments of government have their lawyers, so does the Emperor or King or President. President Taft has his lawyer though himself both a lawyer and judge. Lawyers officially and unofficially are large participants in the enactment and enforcement of the law.

As adviser and advocate, the lawyer serves the masses and the classes, the corporations and individuals.

Of all men he has the most environment and the most contact with environment and consequently the best and broadest development.

As the representative of his client, he is the extremest of partisans. In public and social affairs, he is the least of partisans, and for these reasons as well as because of his knowledge of law, he is the fittest assistant of the judge.

Of all citizens his responsibilities in connection with government are the greatest, and I may add, the best discharged.

THE PRESS.

The Press, while certainly not a legal court, is believed to have to a material extent judicial or quasi judicial functions, and it has been called in this connection a judiciary,

a censorial court, an ecumenical judiciary, the parliament of man, etc.

It gathers evidence, criticises, censures and approves, finds its bills of indictment, makes its special and general presentments, tries, convicts and acquits. In its quasi judicial functions it deals with the civilized world, and its members judge one another as well as others.

The punitive power of the Press exists in its business of publicity. The fear of publicity, especially among the better classes of wrongdoers, is a powerful deterrent; while the reward of publicity is a powerful stimulant among many who aspire to be useful or distinguished.

It is the right and duty of the Press to honestly criticise the legal courts, but many publications are so unjust and extreme they do more harm by insinuation and abuse, than good by support and coöperation. In so doing, they fall short of their highest usefulness.

True journalism, conscious of its responsibility as well as its power, makes due allowances for the shortcomings of the judiciary proper, defends its character and aids it immeasurably in its work.

The Czar of Russia, it is believed, has felt this world power more than any other world power, not excepting his victorious enemy Japan, and because of it, has markedly changed his course and the history of his Empire. Each great nation is *a* world power. The Press at large is *the* world power.

No institution is to be entirely condemned because of its faults however great or numerous they may be.

Each must be judged by its net effect after weighing its good and evil, and it is not too much to say that the maintenance of a popular government like ours for near a hundred millions of people, scattered over so vast a domain, would be impossible without the news, the information, the discussion, the light and publicity the Press affords.

THE CLERGY.

The injunction of the Savior, "Judge not that ye be not judged," seems not to have been addressed to ministers of the Gospel. For certain it is that barring the legal judges, they do more judging in proportion to their number, than all others. While their powers seem somewhat inadequate for the enforcement of their opinions, their jurisdiction is unlimited both as to persons and subject-matter.

Possibly like the law courts of last resort, they are in more senses than one a court of errors as well as a court of original cognizance.

Aside from all pleasantry; while our ministers, like all other men, are imperfect and make their mistakes, they are an invaluable aid to the legal courts, both in their appeals to the judges, lawyers, jurors and other officers of court and in fearless, but fair and reasonable criticisms upon their conduct.

A great trouble with some of them is that they are not adequately informed as to the law and facts, and have an erroneous view as to the extent of the powers and duties of officials charged with the administration of legal justice, in that they assume that such officials have the option to do whatever they may deem wise and right from a moral viewpoint, when they are limited to the boundaries marked out by the law. No wise and conscientious judiciary aspires to such power. Heaven forbid that it should ever be vested in any tribunal, even under the guidance of the pulpit. It would mean a consolidation or coalescence of Church and State, and an end both of religious and civil liberty.

Another trouble is in the impatience and intemperance, not to say misrepresentation and vituperation, of other ministers while using the pulpit as a stump or the stump as a pulpit, and who exhibit more arrogance, than humility.

The Gospel of Love may be so disguised as to be taken unawares by some hearers and readers as the gospel of hate.

Justice and other good causes suffer at the hands of such advocates.

The lay-reformer does his work chiefly on the surface. The clerical reformer should do his chiefly below it. The former does his work chiefly with adults. The latter should do his chiefly with childhood and adolescence.

The field of the former is more legal and economic, of the latter more moral and spiritual.

The lay-reformer strives to secure the right kind of votes, the clerical reformer should strive to secure the right kind of voters, and this work is to be done in the home and in the church and not on the hustings; not by preaching the laws of man, but the laws of God.

During the last few years I have heard from the pulpit and from ministers elsewhere many speeches on State Prohibition, but I do not recall during that time a single sermon on Gospel Temperance.

The power of the minister, even when seeking to promote the enforcement of the law, is not in preaching the law, but in preaching the Gospel.

If he would save our State prohibition law from destruction, the chief work for him to do is upon the moral foundations necessary to its support.

If he would abolish or abate the divorce evil, the chief work for him to do, is not to denounce and abuse the courts and juries as its promoters, but to attack the marriage evil as the source from which it springs—the marriages of lust, avarice, degeneracy and imbecility.

In most cases in which divorces are granted in this country, the injunction of the Savior, "what therefore God hath joined together, let no man put asunder," is wholly inapplicable.

To charge or assume that God was a party to them is blasphemy.

The power of the Christian minister is in his Gospel life and Gospel preaching, no matter what may be the form or nature of the good he is seeking to accomplish.

With his Christian character duly and distinctively established to begin with, the love of his purposes and the purity of his motives, clearly demonstrated in all that he

does and says, his influence upon the administration of justice is inestimable; he is a power in all Caesardom as well as in Israel. May his tribe increase.

May the time soon come when the three judiciaries may be more harmoniously and effectively coöperative, to the end that justice may be more efficiently and satisfactorily administered and our country enabled to enjoy the chief blessing of human government.

APPENDIX F.

REPORT OF THE COMMITTEE ON JURISPRUDENCE, LAW REFORM AND PROCEDURE.

ALEXANDER C. KING, CHAIRMAN.

In view of the fact that this Association has now before it as a special order for this meeting the elaborate report made by Judge Andrew J. Cobb, on behalf of this Committee, at the last annual meeting, bringing up for consideration the entire system of courts and their procedure as adapted to the needs of the State, your Committee has felt that any report which went beyond supplementing or aiding in the discussion of the report now up for consideration would be of little practical use.

In the number of its courts, the State of Georgia is out of all relation to the States in its neighborhood.

We have twenty-nine (29) Superior Court Judges in twenty-seven (27) circuits; in addition, we have seventy-eight (78) City Court Judges from whose courts a writ of error lies.

Alabama has sixteen (16) circuits, five (5) Chancellors and a comparatively small number of City Courts.

South Carolina has twelve (12) Circuit Courts, and no City Courts or Chancellors.

The population, area and wealth of these states, as compared with those of Georgia show that our judicial equipment in nisi prius judges is out of all proportion to theirs.

Litigation has been made very easy in Georgia.

The City Court with frequent terms, in nearly every county, stimulates lawsuits.

No security or deposit is required for costs, except from non-residents; the practice of taking contingent fees is prevalent and recognized by law as proper and as a result, litigation, much of it trivial, is produced.

A result of these numerous courts of original jurisdiction is the *multiplication* of judicial offices and salaries and the failure to adequately pay a more limited judiciary without additional expense.

Another result is the multiplication of cases in the courts of last resort.

Despite the creation of the Court of Appeals in 1906, the Supreme Court hardly completes its decisions within the time limit of the Constitution, and the length of time which elapses between the argument of a case and its consideration for decision deprives the court of the greatest aid an Appellate Court can get,—namely, the proper oral argument of the case.

This condition, and the absolute necessity for some remedy; also the growing business of the Court of Appeals, which suggests that that court will ultimately fall behind if not relieved; the feeling that to the present labors of the Supreme Court should be added some provision by which a review of decisions in the Court of Appeals could be had in the Supreme Court; not in all cases as matter of right in the litigants, but as matter of sound legal discretion in the court, somewhat as the United States Supreme Court may supervise judgments of the United States Circuit Courts of Appeal, has suggested to this Committee that it could afford aid to the Commission or other machinery by which the Association may investigate the question of relief in our Appellate Courts by presenting some information as to the condition of business in the Supreme and Appellate Courts of other States with some general information as to their practice, etc.

To this end we have sent out to the clerks of the Supreme Courts of the several States, and to the secretaries of the several State Bar Associations the following questions:

1. What Courts of Appeal are there in your State?
2. The number of Judges of each Appellate Court?
3. Terms of Office and how chosen?
4. Jurisdiction of such Court or Courts?
5. Is there any limitation on jurisdiction either as to character of case or amount involved?
6. State briefly method of taking cases up?
7. Is appeal, or writ of error, matter of right or must a judge approve issuance of writ of error, or like process?
8. Are records or briefs required to be printed?
9. Are oral arguments allowed in all cases? If not, please state regulations as to this.
10. What time is allowed for oral argument?
11. What is the average number of cases returned each year to your Appellate Court?
12. State approximately number of decisions such court hands down annually?
13. What is the condition of the docket? How long does it take to reach a case for argument after it is docketed?
14. Please state relative numbers of criminal (felonies and misdemeanors) and civil appeals?
15. Do the civil cases *as a rule* involve considerable sums?

We have received answers, with but few exceptions from each of the gentlemen so addressed, together with some letters containing other and valuable information. The Committee wishes to now publicly express its recognition and appreciation of the courtesy thus shown by the several court officials and officers of the State Bar Associations.

We append a table, showing in columns the answers to certain of these questions deemed most important.

This information suggests several things which we think could be adopted with advantage in relieving our Appellate Courts.

Your Committee calls attention to the fact that the Supreme Court of Georgia and Court of Appeals are, under our present system, not furnished with the ordinary material for proper consideration and disposition of a case.

In nearly, if not quite three-fourths of the states, records and briefs are required to be printed. This means that each judge who participates in the decision of a case, at least has his copy of what he must consider.

In Georgia *one* Record, including the Bill of Exceptions, and that often written (not even typewritten), is furnished for six justices who join in opinions that become full bench decisions with all that that term implies.

It is permitting litigants and lawyers to shift their proper share of the work of taking up a case not to require, as a condition for its hearing, that *each* judge should be furnished with a copy of the record (or such an agreed abstract of it that the case can be decided on such abstract), and a copy of the brief. If it is thought that printing is too onerous at least have written or typewritten copies.

The present practice in the court in this respect is a backward step from what its rules used to require.

When the court was organized in 1846, its rules required:

"The counsel for the plaintiff in error shall furnish each of the judges and the reporter with a copy of the Bill of Exceptions, and a note of the points or questions intended to be made and a statement of the facts in the cause, which shall be submitted to each of the judges and the reporter, at or before the first day of the term to which the cause is returnable, with a list of the authorities relied on."

1 Kelly XV.

This continued substantially the practice—the rule in 1869, reading as follows:

"On or before the calling of the cause, on the docket for a hearing, the counsel for the plaintiff in error shall furnish to each of the judges and to the reporter, a printed or plainly written copy of the Bill of Exceptions, a brief of the points intended to be made in the argument, with

the authorities relied on, and, if the facts of the case do not appear in the Bill of Exceptions, a brief abstract of them as they exist in the record."

38 Ga. 690.

The rule next adopted required:

"On or before the calling of a cause on the docket for a hearing, the counsel for plaintiff in error shall furnish to each of the judges and the reporter, a printed or plainly written brief of the points intended to be made in the argument, with the authorities relied on; and, also, to each of the judges, a printed or plainly written abstract of all the facts of the case necessary to a full understanding of the questions in the cause, as said facts appear from the Bill of Exceptions, under the certificate of the judge, or from the record, the abstract to include, when necessary to a full understanding of the points, an abstract of the declaration, bill, pleas, answers, motion for new trial, brief of evidence, bill of exceptions, or other record, and, to be consistent with the same, the certificate of the judge. It shall also be the duty of the counsel of the plaintiff in error to furnish the copy of this abstract to the counsel for defendant in error at least forty-eight hours before the calling of the cause, and the cause will be argued upon the reading of this abstract without the formal reading of the record; the court itself undertaking to examine the record in its consultations, when important: Provided, that if the defendant in error shall not be satisfied with said abstract, he shall have the right, at the calling of the cause, and at the opening of the argument of the plaintiff, to furnish to each of the judges and to the plaintiff's counsel, either an abstract of his own in writing, or such correction of the plaintiff's abstract, as shall, in his judgment, be consistent with the record and certificate of the judge. Any failure of counsel to comply in good faith with this rule, made, as it is, for the mutual aid of the court and parties, will be treated by the court as an obstruction to the progress of business, and

will, in each case, be dealt with as the circumstances may require."

Code 1882, p. 1358.

There is no reason why, if such an abstract is on file and not disputed, it is not a solemn admission *in judicio* on the part of each side as to the case and what is there for decision.

But why not print?

Are the people and lawyers of Georgia so much poorer than those of South Carolina, North Carolina, Virginia, Alabama and Mississippi, that they cannot print records and briefs in cases of sufficient merit to be carried to the highest courts on Writ of Error?

If the necessity of printing made litigants and lawyers more careful about carrying up cases on a bare chance of reversal, and where they thought the chances were slim, it would be a good thing for the State.

Again, briefs in the Supreme Court and Court of Appeals are not required to be in any particular form nor to contain anything. On anything called a brief the court undertakes to "dig out" and decide a case.

Of course any lawyer who does not want to take the responsibility of telling his client his case is without merit, can appeal without any particular labor, and without the expense of attending the court, as the Appellate Courts encourage submission on brief and will accept anything as a brief.

No form of brief has ever been devised superior to that prescribed by the Supreme Court of the United States in its rules. That rule prescribes as follows:

1. "The counsel for the plaintiff in error or appellant shall file with the Clerk of the Court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. "This brief shall contain, in the order here stated:

"(1). A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

"(2). A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

"(3). A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. "The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of error shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted."

When a brief does not come up to whatever rule the court prescribes, it ought not to be received. No penalty need be inflicted in the first instance; but the delinquent could be notified that if a proper brief was not presented in a sufficient time the case, if the delinquent represented plaintiff in error, would be dismissed for want of prosecution; if he

represented defendant in error, it would be considered as unrepresented, or a fine might be imposed as for disobedience to an order of court.

No case ought to be allowed to be submitted on brief in the Supreme Court, unless the brief is the equivalent of a compact, oral presentation with citation of authorities.

The following rules of the Supreme Court of Wisconsin, on this general subject, seem to us very excellent:

"Appellant or plaintiff in error shall print a case containing an abridgment of the record, so far as necessary to present the question for decision, stating at the beginning whether a judgment, an order, or both are sought to be reviewed, and giving the name of the trial court and the name of the judge who presided at the trial. The case shall be paged and shall mention each paper not printed or abridged, with an appropriate reference to the page of the record where it is to be found.

"Each case of more than twenty pages shall have a printed index, alphabetically arranged, referring to each paper in the case, the names of the witnesses, and the pages of the direct, cross and re-direct examination.

"If the printed case, as served, is incomplete or inaccurate, the opposing party may, within ten days after receiving the same, serve on the attorney for the appellant or plaintiff in error a supplemental case, making the necessary corrections, with an appropriate index and references to the record.

"Each party shall print a brief, giving references to the pages of the record and printed case for each statement and proposition based on the record.

"The brief of appellant or plaintiff in error shall contain a concise statement of the nature of the action and the issue involved, the result of the trial in the court below, the errors relied upon, the leading facts or conclusions which the evidence tends to prove, the principles of law applicable, and the authorities in support thereof.

"The brief of the respondent or defendant in error may also state the leading facts or conclusions which the evidence tends to prove, and the principles of law in support of the same, with authorities.

"Discussion of facts in brief shall be as brief as practicable; references shall be made to the pages of the printed case where the evidence relied on may be found."

Rules 6-12, Supreme Court of Wisconsin.

We believe if a system of this sort could be adopted it would check ill considered writs of error and greatly aid the court in its labors.

The court should not be expected to be a mere delver and investigator *de novo* of each case brought up. The record as presented with the brief and argument should present to the court the substance of both the law and fact upon which it is expected to render judgment. Its own independent research should not be necessary except in some supplemental matter or exceptional case.

We would also suggest for consideration the wisdom of repealing the constitutional provision requiring all cases to be decided before the close of the second term.

If the court can properly consider and decide the number of cases brought, within this time it will do it anyhow. If it cannot, then the section is a mandate that they shall be decided haphazard, or if the court fails to speak, then the lottery of the lapse of time decides for the defendant in error.

If the idea of a pressure being put on the court to prevent a case being held up too long after argument, has any merit, the section should at least be amended so as to require all cases to be decided within a given time *after submission.*

Then the court, when it had taken under advisement a certain number of cases could stop the call of the docket, take them up for decision and render their decisions with the benefit of recent argument in those thus presented.

As it is now, for fear that the cases may not be even submitted within the allotted time, the dockets are called and cases presented, when they may not be taken up for consider-

ation for six months after submission. Again, those last submitted must get all the arrearages of delay, the time having been consumed in considering the prior cases on the docket.

It is submitted that a provision of law that coerces the court to a practice in calling the docket and hearing cases that makes the time thus taken, used with the smallest possible benefit to the court, and which prevents cases, because of position on the docket, from having an equality of opportunity with every other case, is wrong.

We might extend this report, but in view of the probability of these matters being inquired into by the Association more deliberately by some permanent board or commission, we deem it inexpedient.

Respectfully submitted,

ALEXANDER C. KING,
Chairman.

STATE	TERM OF JUDGE AND NUMBER		MANNER OF SELECTION	IF RECORDS OR BRIEFS PRINTED	No. OF CASES	IF APPEAL OF RIGHT	SPECIAL MATTERS
	Term	No.					
ALABAMA							
Court of Appeals	6 years	3					
Supreme Court	6 years	7	Election	No.	650	Yes	
MISSISSIPPI	9 years	3	J. Com. Governor's Appointment	No.	600	Yes	
		6					
TEXAS							
1 Supreme Court	6 years	3	Election by the People	In Civil Cases record typewritten.	450	Yes	Supreme Court 1 year behind.
6 Courts of Civil Appeal	6 years	3		Briefs printed if over eight pages.	1400	Yes	
1 Court of Criminal Appeals	6 years	3		Criminal cases heard anyhow.	680	Yes	Court of Criminal Appeals 6 weeks behind
TENNESSEE							
(Two Courts)	8 years	5	Elected	No	1500	Yes	Docket clean
SOUTH CAROLINA	10 years	5	Legislature	Yes	200 to 250	Yes	Court up
NORTH CAROLINA	8 years	5	Elected	Yes	400	Yes	Docket clean
VIRGINIA	12 years	5	Legislature	Yes	325	No Judge of S. C. must approve.	Docket cleared
WEST VIRGINIA	12 years	5	Elected	Yes	350 to 400	No Judge of S. C. must approve.	1 year for decision
ARIZONA	4 years	5	By the President	Printed and typewritten		Yes	
Supreme Court of the Territory of Arizona							
MARYLAND	15 years	8		Yes	175		
NEW JERSEY	7 years	9	Governor appoints	Yes		Yes	There are 6 lay Judges in addition in Ct. of Error and Appeals
INDIANA							
Supreme Court	6 years	5	People	Printed or typewritten	199		
Appellate Court (2 Divisions)	4 years	3 each division	People		354	Yes	
ARKANSAS							
Supreme Court	6 years	5	People	Printed or typewritten	500	Yes	
NEW YORK	14 years	9	Election	Yes	600	Yes	Cases reached in 1 year or 15 mos.
CALIFORNIA							
Supreme Court		7					
Three District Courts of Appeals		3 (each)					

STATE	TERM OF JUDGE AND NUMBER		MANNER OF SELECTION	IF RECORDS OR BRIEFS PRINTED	No. OF CASES	IF APPEAL OF RIGHT	SPECIAL MATTERS
	Term	No.					
PENNSYLVANIA	21 years	7	Elected	Yes	650	Yes	No re-election of any S. C. Judge.
CONNECTICUT	8 years	5	Nominated by Governor and elected by Legislature	Yes		Practically Yes	Court up.
RHODE ISLAND	Until his place declar'd vacant	5	Elected by Legislature	No	250	Yes	
MASSACHUSETTS	Life	7	Governor appoints	Yes	400 to 500	Yes	Court kept up.
VERMONT		5	Legislature	Yes	200	Yes	
NEW HAMPSHIRE	Until 70 years old	5	Governor and Council	Yes	100	Judge approves	
MAINE	7 years	3	Governor and Council	No requirement	200	Yes	These Judges hold the ni si juris Courts and appeal on writ of error.
MICHIGAN	8 years	8	People	Yes		Yes	Sits one week—30 cases adjourn two weeks—Court decides.
WISCONSIN	10 years	7	People	Yes	450	Yes	Court keeps up.
IOWA	6 years	5	People	Yes	660	Yes	Fairly up.
MINNESOTA	6 years	5	People	Yes	550	Yes	Court up.
NEBRASKA	6 years	7	People	Yes	475 to 500	Yes	18 to 20 before reached
KANSAS	6 years	7	People	Yes	600	Yes	Docket right up. Takes 11 mos. to reach for argument.
NORTH DAKOTA	10 years	5	People	Yes	200	Yes	
SOUTH DAKOTA	6 years	5	People	Yes	300	Yes	Court up
IDAHO	6 years	3	People	Typewritten or Printed	125	Yes	
MONTANA	6 years	3		Yes	150	Yes	
KENTUCKY	8 years	7	People	No.	950	Yes	Court up
UTAH	6 years	3	People	Yes	100 to 125	Yes	
COLORADO							
Supreme	10 years	7	Appointment				
Appeals	4 years	5	Appointment	Yes	325	Yes	
OREGON	6 years	5	People	Yes	230 to 250	Yes	
WYOMING	8 years	3	Elected	No		Yes	

A few of the Courts restrict the right of Appeal by amount.
In a number an abstract of the record including any Bill of Exceptions, is required to be prepared by Counsel for Appellant and served on the other side.

APPENDIX G.

SUPERIOR COURTS OF ORIGINAL JURISDICTION, THEIR NUMBER, CONSTITUTION, AND JURISDICTION.

REMARKS BY A. F. DALY, OF WRIGHTSVILLE.

(Stenographic Report by Edward Crusselle.)

I understood our Secretary to say a moment ago that a paper was to be presented, but I understood previously that this was to be an informal discussion.

It is difficult to discuss a proposition, which has been so thoroughly and ably handled as the question I am now to discuss before you, by the able papers heretofore presented, and especially by the President to-day—the subject of Superior Courts and their organization.

The most vital question, to my mind, that this Association has to contend with is that of readjusting our judiciary, so as to preserve its intelligence, integrity, and efficiency. The Judicial System of our government is the balance wheel against legislative errors and executive mismanagement. In other words, it is the protection against the extremes; it is the check or balance wheel in our system of government. It was never intended in the original organization of our government that we should be a pure democracy. The people cannot legislate, nor can they pass upon judicial matters at the polls with any intelligence or efficiency.

So far as Superior Courts are concerned, according to my opinion, it is the most important office in the State. It has original and exclusive jurisdiction of some of the most vital interests of the individual citizen. It comes nearer in touch with the people than any other office. The power and

influence of the judge of the Superior Court are great, and, where he properly administers his office, he can be a most useful official. It should be, therefore, the purpose of this Association and of the people to remove all individual and political influence as far as possible from the selection of the judges of the Superior Court. I have no patience at all with that idea of "Progressive" Democracy and Republican "Insurgency," that believes that the people should legislate and should pass upon judicial questions as well, under the "initiative, referendum, and recall." It cannot be applied to our system of government, especially our judicial system. What self-respecting judge would be willing to go upon the bench, when at any time some decision that he would render, would be the cause of his recall? He would have to go before the people and let them pass upon the judgment in that case. No self-respecting man would be willing to hold a position on the bench, when such restrictions as that were thrown around him. Therefore, we should adopt such methods (and I believe the methods have been suggested by several of the able papers presented to this Association) as would be effective to remove the judiciary as far as possible from political influence.

Judges are not born; they are made by experience. Very few men can go upon the bench, and make efficient judges without experience. Therefore, I say that of all the methods, that we have adopted, the executive appointment is the best. It has been suggested in two able papers read at our last meeting by Messrs. Sibley and Hofmayer, I believe, that the selection of the judges be by the method of recommendation or certificate from the judges of the Supreme Court. I think that is an admirable suggestion. If there is any tribunal in Georgia, that ought to know who are capable of making judges of the Superior Court, it ought to be the Supreme Court of Georgia. I would add, however, that, if that method be adopted, it might be improved on in this way, that instead of any man being allowed to be a candidate for the office, it ought to be a disqualification of any man to be a candidate, directly or indirectly, for the office

of judge. Let the Supreme Court certify to the Governor a sufficient number of names qualified, so that he can make the appointment; let the Governor make the appointment; and the Senate confirm it. In that way you would remove it from political influence. As long, however, as you encourage candidacy for the office, undesirable and inefficient men will get to the bench.

I think, in addition to that, I may go beyond what would be the general sense of this Association, but I believe that, when we adopt the right method of selecting judges, they ought to be without limit in term, for life or during good behavior.

I do not believe in frequent changes of judges. Of course there should be restrictions placed upon all judges to prevent incompetency, inefficiency, or corruption. That can be done by impeachment, or other methods safely adopted, but I do not think it wise in our judicial system to be making frequent changes in the office of judge. Each man has his own particular views about legal propositions, and such changes bring about confusion, and destroy the benefits that we should get from the long experience of an able judge.

Now, these suggestions are just thrown out for what they are worth. I would say further that, as relates to the judge of the Superior Court, his power is immense until he comes in contact with the jury on the question of facts. Then he is a weakling. He has no power to express an opinion. I believe the "Dumb Act" ought to be repealed. I believe the judge ought not only to be authorized, but required, to aid the jury in applying the law to the facts. As it is now, the judge is compelled to present an abstract proposition of the law, and in nine cases out of ten the jury do not know how to apply it, no matter how honest they are. It would greatly aid the dispensation of justice and the efficiency of the courts, if that restriction were taken off, and I believe we would find that we would get better results and there would be less criticism than there is now, of verdicts of juries.

Juries are not always wrong. As a general rule, they are right, but they are very often ignorant, and in no case of that kind has the judge of the Superior Court any power to present to them anything but an abstract proposition of law, and even then he may slip up on some point and be reversed, because he has intimated, by some expression he has used, some opinion upon the facts of the case.

I will not undertake to discuss all of the questions presented in these papers, but I will say that I think the papers read by Mr. Sibley and Mr. Hofmayer at the last meeting of the Bar Association, and the able paper read to-day by our President, present the true situation, and the course that we should pursue in reforming our judicial system. I believe the city courts ought to be abolished, every one of them, and the Superior Courts ought to be required to hold quarterly sessions, and such amendments made as to the right of taking judgments or verdicts, where no defense is filed, at the first term, as will dispatch the business before those courts. Let the grand juries be called together possibly only twice a year, as they are now, but let the courts be held quarterly, and a sufficient number of Superior Court judges be appointed to hold those Courts, and abolish the city courts with their various methods of practice. They are an invitation to small men, and in many instances you will find men presiding over those courts who are not competent to perform the official duties they have assumed. Their jurisdiction is unlimited as to the amount involved, and large and important matters have to be passed upon by them. They have no uniform system of practice, each court being governed by the methods prescribed in the Act creating it, and no lawyer can safely practice in one of them until he examines the Act creating the court.

Therefore, the Superior Courts ought to be increased in number and the circuits made small enough for them to hold quarterly sessions, and dispose of the business they have before them, and the city courts should be abolished.

APPENDIX H.

SUPERIOR COURTS OF ORIGINAL JURISDICTION, THEIR NUMBER, CONSTITUTION, AND JURISDICTION.

REMARKS BY F. WILLIS DART, OF DOUGLAS.

(Stenographic Report by Edward Crusselle.)

It seems to me that we should approach the subject under discussion this afternoon with a due appreciation of its importance. As has been stated by our friend, who preceded me, these talks are, as I understand it, to be absolutely informal. I wish to refresh my memory as to the divisions of the subject, as outlined in the very able report of the Committee at the last session of this Association.

(Mr. Dart referred to the report to refresh his recollection.)

When we take up the consideration of any question involving our judicial procedure or system, we should do so with a full realization of the importance of the subject, and when, as we are doing at this session of the Association, we are attempting to discuss our judicial system as a whole. we ought to doubly appreciate the importance and gravity of the undertaking.

I was requested by the Secretary to discuss briefly and orally the Superior Courts of Original Jurisdiction, their Number, Constitution, and Jurisdiction. As I see it, gentlemen, it is difficult to discuss these courts, Superior Courts, without trespassing in some degree upon the subjects assigned to other gentlemen, who will discuss under different heads the appellate courts, inferior courts, procedure in the courts of original jurisdiction, etc. It seems to me, however, that the Superior Court occupies a pivotal position in our court system, and, as I say, I believe it is necessary therefore

to discuss briefly in passing, some points which can be more properly taken into consideration in the discussion of some of the other divisions of the subject.

It occurs to me that one of the troubles with our system is the fact that it is not quite the *system* that it ought to be. I do not believe that the trouble is so much with this court, or that court, as in the fact that our various courts are not bound together in one cohesive system as they should be. The Superior Court might be termed the mother of all of our courts. The time has been when we had practically nothing but the Superior Court. For one hundred and thirty-four years, our Superior Courts have been constituted and governed by practically the same rules that now apply. The Superior Court has not only seen courts of inferior jurisdiction rise and, sometimes, fall, but has also witnessed the creation of the Appellate Courts. Some think the lower intermediate courts should be abolished. I realize that there is some merit in this suggestion. At the same time, if you will remember, we have had from time to time various courts which have been organized and maintained for the purpose of assisting the Superior Court, and, while I am not as familiar with the laws of other States as I would like to be, I believe that in most States there is a system of trial courts consisting not only of the superior or circuit courts, but also of intermediate courts, and we ought, therefore, to weigh these facts very thoroughly in discussing and considering the question as to what kinds of courts we are to have.

I notice in the division of the topic that one of the questions to be discussed is as to the number of Superior Courts. Now, that, as I take it, depends largely or practically altogether on the question as to whether or not we are to have any intermediate courts. If city courts are to be abolished as a whole, then of course it follows that the number of superior courts must necessarily be increased very materially. Now, I believe that the city courts of our State, taking them all in all, have rendered very valuable assistance to the Superior Courts, and have enabled us to dispose of a great

deal of litigation with much less expense and much more promptly than could otherwise have been done. I am inclined to think, however, that some changes ought to be made in the organization and procedure of these courts. It seems to me that we could organize, as an aid to the Superior Courts, some courts patterned after the best constituted city courts which we have, and make these courts of general and uniform judisdiction, and let this provision be made by a general statute. It occurs to me that it would be well to continue some such courts in existence for the purpose of getting speedy and inexpensive trials of cases, and for assisting very materially the Superior Courts in their work. For instance, why could we not organize such courts for each senatorial district? This is not original, because it was touched on by the report the committee made last year, and thirty or forty years ago somewhat similar courts were given a trial, but they were then of much more limited jurisdiction, I believe, than our present city courts. Our State was also sparsely settled then, and possibly the time had not arrived when these courts could give the assistance required, or perhaps no such assistance or relief was then needed, and they were therefore abolished. If we are not going to abolish the intermediate courts entirely, and I doubt the wisdom and propriety of doing that, organize district courts, which can be operated with less expense than superior courts, and in the counties with large cities which possibly need more than one of these courts, let them be given such divisions of courts or number of judges as may be necessary. The expense could be made light upon each county, and at the same time the criticism made by the gentleman who preceded me, upon the line that often in some of the small counties or cities you could not get the best material for the officers of the city courts, would not apply so strongly because the salaries could be made adequate, and you could get good men to serve as judge and solicitor. Let three or four counties support such a court—the expense of the judge's salary being apportioned equitably among them. Let sessions be held quarterly, and, if we are to have any

intermediate courts at all, I believe we could get better results in this way than from our present city courts, and at the same time the district courts would number only about half the present number of city courts. It is true that it is now difficult to keep posted as to the practice and procedure in the various city courts. Often we do not know what it is in the adjoining county. In the suggested district courts, the practice and procedure could be made uniform and we could get better results and at less cost than are now obtained in either the city or county courts.

In considering the superior courts, there are some questions that are very difficult and delicate to handle, or to consider. One of these is the selection of the judges of these or any of the other courts. I take no issue with those gentlemen who have maintained on this floor that the selection of our judges ought to be taken as nearly as possible out of politics. The question is, how can that be done. I do take issue with some of my friends who maintain that you get it out of politics when you let the Governor appoint them. I take issue with others who claim that you get it out of politics when you let the Legislature elect. I do not think that you do so in either case. For instance, take the appointment as made by the Governor. In theory that may be all right—as a matter of fact, it goes largely by favor. In other words, there is a limited number of lawyers to select from, confined as it practically is, to those in sympathy with the administration. I do not mean that any governor would be improperly influenced, but if he does not know the applicants personally he naturally goes to his friends about them. He may wish to make the very best appointment, but he gets his information from a few men, unless by chance he happens to have some personal knowledge of the applicants. Election by the Legislature is open to serious criticism. There is room for unlimited trading and favoritism, coupled with a lack of information as to the character or attainments of the candidates. What can the legislator from the Blue Ridge Circuit know about the qualifications—legal or moral—of the candidates from the Brunswick Circuit? I

think the selections were generally pretty well made under both these systems when in use in this State, but grave mistakes could easily be made under such methods, and I do not think either of them are desirable. Both of these methods have been tried in this State for the selection of the judges, and there has also been tried the method of election by the people. Twice has the latter method been tried, I believe, and I think that election by the people, where the candidates and lawyers generally are careful to demean themselves in such a way that the contest will not be dragged down in politics, can be maintained on a proper plane, and I believe it is possible thus to make good selections of officers for the courts. The popular election method is open, I admit, however, to objections, but that is true of all methods. If a change is to be made, though, I would favor the suggestion made some time ago by our friend Mr. S. H. Sibley, that the selection be made by the Judges of the Supreme Court. Let them select the names of two or three men, and let those names be submitted to the Senate with authority in the latter body to elect one from this number. If a change is to be made in the present method, you would, I believe, come nearer getting the best results in that way. Perfection can not, of course, be attained by any of the methods, but the one last suggested would come much nearer to it, to my mind, than appointment by the Governor or election by the Legislature.

The question of relieving the Appellate Courts could be met somewhat by curtailing the right of appeal to those courts. I can see no real good reason why a case starting in the justice's court, for instance, and tried before a jury in that court, should have the privilege of going on up through the Superior Court to the Appellate Courts, unless perhaps, there is some constitutional question involved. I think we might safely lay down the rule that after a case is tried in a justice's court it may be certioraried to the Superior Court, with no right of appeal from the judgment of the latter court unless a constitutional question is

involved. In this way, the Appellate Courts could be relieved to some extent, at least.

It might be well to abolish appearance terms, or, if you do not do that, let judgments be taken in uncontested cases at the first term in certain classes of cases, for instance those founded upon accounts, unconditional contracts in writing and liquidated demands, as is now done in some of the city courts. I do not see the necessity at this time for waiting for the second term in these kinds of cases in the Superior Courts. I appreciate the fact that in the old days, litigants had to wait for the coming of the attorneys, who rode the circuit to consult them about their cases, but no such reason now exists. There are other changes in practice and procedure that could be suggested that would improve the efficiency of the courts and make possible a more perfect system, but I do not wish to take up any more time of the Association. My remarks are largely introductory anyhow, and I would not have accepted the kind invitation of our worthy Secretary to address you at all, if I had not known that there were some really good speeches to follow, and I shall not, therefore, trespass longer on your time and patience.

APPENDIX I.

PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

PAPER BY ROBERT M. HITCH, OF SAVANNAH.

We hear now-a-days a continuous and increasing outcry against the administration of law. Our substantive law seems to be generally satisfactory, but its administration is falling more and more into disrepute. It is condemned by the laity almost universally. The great lawyer and jurist who is now President of the United States looks upon it with high disfavor. To our only living Ex-President, it is well nigh intolerable. To one or more justices of the United States Supreme Court, it is not at all what it ought to be. Another eminent Federal jurist has publicly declared that the system has broken down, that it is an unworkable machine, and a large proportion of the leading members of the American Bar agree with him in that conclusion. The last Annual Report of our Committee on Jurisprudence, Law Reform and Procedure declared that "our system needs revision—a thorough revision—a revision from bottom to top."

An old proverb declares that where there is much smoke there is apt to be some fire. My own judgment is that the complaints against the administration of law are entirely well founded, and I subscribe whole-heartedly to the proposition that the system needs revisions from bottom to top. It is out of touch with modern conditions, and does not adequately accomplish the chief purpose of its existence,—which is, the giving of justice. Piecemeal revision will not suffice. The entire system should be overhauled and brought down to date.

The chief complaints against our system of procedure are that it is slow, uncertain, expensive and ineffective. To illustrate: The case against the Standard Oil Company was commenced in 1906 and only a few days ago, five years afterwards, the decision of the Supreme Court was announced. Again: The foreclosure of a mortgage on real estate securing a loan of money cannot be carried through to a sale according to the statutes in less than twelve months, as a general rule. As a consequence the lawyers have in an extra-legal way amended the statute by the universal adoption of a power of sale clause which results in bringing about a sale of the property within thirty days after default. Similar illustrations could easily be multiplied almost indefinitely. Two recent criminal cases suggest also a very illuminating comparison. I refer to the case against Dr. Crippen in the English courts and the case against Dr. Hyde in the courts of Missouri. Both were commenced during the same year and in many respects the cases were similar. The method of procedure and the results achieved, however, were vastly different. Dr. Crippen was indicted on October 12th, his trial was commenced on October 18th, he was found guilty on October 22nd, his appeal was heard and decided in less than two weeks after conviction, and on November 26th he was hanged. That procedure was calculated to create a wholesome respect for the law. The trial of Dr. Hyde was commenced on April 16th in Kansas City, a verdict of guilty was rendered on May 16th, one month later, his motion for new trial was overruled on July 5th, his appeal was heard on February 6th, and recently a new trial was granted and everything is to be gone over again. That procedure is calculated to create disrespect for the law.

The most serious complaint is against the administration of our criminal law. Some of the evils relate to the technical machinery of administration, while others extend to the grand jury room, the petit jury box and the sheriff's office. It sometimes occurs that sheriffs are derelict in the performance of their duties. While the Governor is supposed to see that the laws are executed, neither he nor any other offi-

cial has any control whatever over the sheriff. Frequently the grand juries fail to indict and the petit juries fail to convict when indictment and conviction would seem to be inevitable. The trouble here is that we have state prohibition as to the commission of crimes and local option as to the punishment for crimes committed. The system is illogical and inconsistent. Either the county commissioners of the several counties should be empowered to adopt criminal statutes to suit their respective localities (an intolerable suggestion), or, if the criminal laws are to be made by the State as a whole, then the State should be given authority to enforce those laws in every county.

The dissatisfaction with the administration of the law is becoming more and more inclined to vent itself upon the members of our profession. There is an increasing prejudice against lawyers. The reason for this is obvious. We are a prominent and conspicuous part of an objectionable and unsatisfactory system. Practically every State Legislature and every Congress is dominated by lawyers. Lawyers constitute the judiciary. In a great proportion of cases—probably a substantial majority—our Federal and State Executives are lawyers. It thus appears that the legislative, judicial and executive departments of government are largely in our hands. It is almost always within our power to make such changes in the law as conditions may require. Our entire system of government, Federal and State, is largely the work of lawyers, and it is to the glory of the profession that we have furnished the American people with a system of government which in the main is the best that history records. It is to our discredit, however, that we have allowed these evils of administration to grow up in modern times and to go on unchecked, and it is only natural that the public should blame the lawyers if well recognized defects in the laws of administration and procedure are not remedied and corrected with promptness and thoroughness.

The trouble with us is that as a whole lawyers are inclined to be idealists rather than practical-minded men of affairs. Our ideal is to attain absolute justice—to arrive at truth. It

is a noble ideal, but rarely attainable. In this world of human imperfections, justice can only be approximated.

The common law is sometimes spoken of as the perfection of reason. It is not always wise, however, to apply too strictly these ancient precedents to the changed conditions of modern times. Our daily occupation begets in us the habit of viewing every proposition in the light of precedents. We must not look too constantly into the shadows of the past for precedents, but should occasionally turn our faces to the sunrise. An able editor of a weekly publication of wide circulation recently spoke of government by precedent as government by the dead. The common law which we inherited from England was the growth and product of hundreds of years. It was developed by judges who enjoyed long tenure of office, who were paid salaries that made them entirely independent and who were remarkably free from statutory interference as to the method of administering and applying the law. As a consequence the law developed *pari passu* with the development of social and commercial conditions. It was always reasonably adapted to the times. The people of England have continued to develop that system of law and have kept it abreast with prevailing conditions. But when we adopted the common law something over a hundred years ago, we embodied its principles in written constitutions and statutes which could with difficulty be changed. We then bound our judges hand and foot, gagged them, gave them a bare pittance for a living and arranged it so that their tenure of office would be brief. Time moved on but the law stood still. Social and business conditions were revolutionized, but the law was as the law of the Medes and Persians which changeth not. As a result it appears that while the English and the American people started out with the same system, the English system is now well adapted to present conditions, whereas the American system does not receive the commendation of any impartial observer in any country.

But enough of talk. As a general rule lawyers are inclined to talk too much and to act too little. It is all well

enough that discussion and deliberation should precede action, but it is equally proper that action should follow discussion and deliberation. It seems to me that the time to act has come. And lest I be charged with merely finding fault and proposing no remedies, I suggest the following as a brief outline of some of the changes relating to our Superior Courts, City Courts, and Appellate Courts, which it might be well to consider:

1. Wipe out the greater part of our statutes governing details of procedure, and in the place of those statutes let the Supreme Court adopt rules of procedure covering all such matters of a general nature and let the several trial judges adopt such supplemental rules of practice as may be needed in their several jurisdictions. This would give elasticity and flexibility to the system and permit changes to be readily and easily made as the needs therefor might arise. A precedent for this is furnished in the National Bankruptcy Act wherein provision was made for the adoption and promulgation by the Supreme Court of all necessary forms and rules governing the practice.

2. Abolish the "Dumb Act" and untie the judges. Give them long tenure of office and good salaries. Make them independent of everybody and everything and subject only to the law and their consciences under their oaths of office. Give them the power and make it their duty to assist the juries in reaching just verdicts.

3. Let the sheriffs be made subject to suspension by the Governor, in his discretion, to be followed by impeachment proceedings instituted by the attorney-general in the name of the State and at the direction of the governor and before a bench of three judges from circuits nearest that of the sheriff's residence. Provide for prompt hearing and allow no appeal. A number of other States have laws similar to this, so the proposition is not without precedent.

4. Allow grand juries and petit juries to be drawn for any county in any case from any part of the congressional district, upon motion of the attorney-general in the name of the State, such motion to be made at the direction of the

governor. Some of our counties in former times were as large as the average congressional district of to-day, and this change would therefore not be in reason opposed to the doctrine that a man should be indicted and tried by a jury of the vicinage. Besides, modes of travel and communication are vastly superior now to what they were in former times. By this system there would be a reasonable probability that the State laws would be uniformly enforced in the several counties irrespective of local sentiment in favor of those violating some particular statute. The Federal system of drawing juries furnishes an example precedent for this proposition.

5. Fix the number of strikes in all civil cases and in all felony cases at six on each side and in all misdemeanor cases at three on each side. Let the defendant be sworn and examined as a witness in criminal cases the same as in civil cases.

6. Abolish terms of court. They have served their day and time. Let all civil cases be ripe for trial within twenty days after service. Let the times of holding the several courts be arranged and adjusted by the several trial judges to suit local conditions, with perhaps a proviso that court should be held in each county not less than a certain number of times in each year. Extend the principles of the attachment practice and let a greater proportion of cases commence by levy followed up by the filing of a declaration within five days. Forbid the bringing of suits or the interposing of defenses or counter claims except upon certificate of counsel that the same is done in good faith. Let all pleadings of both plaintiff and defendant be sworn to. Allow the plaintiff to file with his declaration and the defendant with his pleas written interrogatories to be answered by his opponent under oath, and provide for the entering of judgment by the clerk promptly in all uncontested cases.

7. Let instructions to juries be settled by the judge and counsel before the charge is given. Have the stenographic report of each day's proceedings filed the next day if possible, and at least within forty-eight hours. Let an appeal

be a simple expression of dissatisfaction with the result of the trial and a desire for an appeal and let it be entered within forty-eight hours after verdict.

8. Abolish all new trials except in rare and unusual cases, when the appellate court might desire additional light on the facts. Abolish so-called briefs of evidence and let the entire transcript of the proceedings go up to the appellate court. Abolish motions for new trial and bills of exceptions. Let the appellant state in his brief the points on which his appeal is based, and have the brief served on opposing counsel fifteen days before the hearing in the appellate court. Let the appellate court render final judgment in all cases, civil and criminal, increasing or diminishing recoveries in civil cases and sentences in criminal cases, in its discretion. One verdict by a jury is enough. It seems to me a solemn farce for a case to be sent back two and three and four times for re-trial before a jury. Such a thing should be legally impossible of occurrence. The victor in such cases finds himself vanquished at the conclusion. The law has kept the word of promise to his ear and broken it to his hopes. It has given him a Barmecide's Feast.

9. Allow no appeals in misdemeanor cases. The pardon board and the governor can be trusted to take care of an occasional miscarriage of justice in that class of cases. Allow no appeals in civil cases where the amount in controversy does not exceed $500 in value. Where a less sum is involved neither side can really afford to appeal, the poor man least of all.

10. Abolish the pardon board and discourage in every possible way the miscellaneous signing of petitions for pardon by the people and the granting of pardons by the governor except in rare and unusual cases. Our people have acquired a Gallic instability of character. They have developed a sentimentality which seems to abhor punishment for crime. Jurors who convict a man of a crime involving life imprisonment will sign a petition for his pardon within a brief while after conviction. It is a safe bet that Mrs.

Maybrick could not have been kept in any American prison for as much as five years, even if there had been no doubt whatever of her guilt. We have much to learn from England in firmness and stability of character, as well as in adherence to law and the judgments of the courts.

12. Amend the constitution wherever necessary to carry out the foregoing.

The above suggestions are not intended to be exclusive. Many others of equal or greater merit might be made. They merely indicate what is my idea as to the general character of the revision which is needed in our system of procedure.

It is stated in the Book of Books that all things should be done decently and in order. I am a strong believer in that plan of action. While radical changes are needed, we should go about them conservatively and with deliberation, and above all things let us be practical about it. The General Assembly of Georgia convenes within a few weeks, and I would suggest that this Association memorialize the Governor and through him the General Assembly to create a commission of fifteen distinguished citizens who shall be charged with the duty of studying the evils which have grown up under our present procedure, of making diligent inquiry into the laws of practice and procedure in other states and countries, and of reporting to the General Assembly in 1912 with a plan for the reorganization of our judicial machinery, and for a thorough going reform and revision of all of our laws of administration and procedure, civil and criminal, to the end that justice may be done speedily, economically and with inexorable certainty and precision.

The foregoing views are respectfully submitted. They are based upon an experience of eighteen years at the Bar and on a measurable degree of observation and study. If they are wise, I trust they will be adopted; if unwise, let them be ignored.

APPENDIX J.

PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

PAPER BY W. C. BUNN, OF CEDARTOWN.

My assignment is upon the subject, "Procedure in Courts of Original Jurisdiction." I hope that I will not disappoint any member of this Association if it transpires that I have no anathemas to hurl at our Georgia system of procedure in these courts.

Having been separated for several years from active practice in the justice courts, I shall not attempt to deal further with the procedure in these courts than to say that the prevailing system is very simple, as it should be, and, so far as I can judge, compares well with that of similar courts in other States.

However, I believe it would be wise to withdraw such classes of cases as forcible entry and detainer from the jurisdiction of the justice courts. I fear that the issues in such cases are hardly suited to those courts, although I am well aware that it may be said of most of the presiding magistrates in the justice courts of this State, that they are very "fearfully and wonderfully made." For a lawyer to speak learnedly, instructively and feelingly of the procedure in justice courts, he should, very recently, have tried a case before a justice of the peace, and either lost or won it. His feelings would doubtless be reflected in the opinions he expresses.

Passing by the courts of ordinary and the county commissioners' courts, with no particular criticism to make as to the procedure therein, I speak particularly with reference to the procedure in our superior courts and city courts.

About a year ago a gentleman from West Virginia visited and employed me to represent him in examining the principal witness in a case pending in West Virginia, in which he was the defendant. The witness lived in Georgia. The case was a damage suit growing out of a contract of rental of a hotel that had burned down. In order that I might more intelligently question the witness as to the issues, my client brought me a copy of the declaration. There were, as I remember, four different counts, all presenting substantially the same cause of action, but in different language, and every count was a complete suit in itself. In Georgia, one well worded typewritten page would have proved sufficient to present the case to the court, and pray for the proper relief. With much complacency did I compare our system of procedure to that of West Virginia.

I assert that our system of procedure is an excellent one. I do not say that it is perfect, or approximately so, but it is founded on the right line. The fundamental purpose of every trial in any court should be to do real and substantial justice between the parties litigant. In order to accomplish this purpose, the prime object should first be to get the issue or issues clearly presented for adjudication, eliminating everything but the contested issues. This must be done through the pleadings.

The Neel Pleading Act, now of force, is excellently framed to accomplish these ends. By a simple petition in the Superior Court, setting out his cause of action in distinct and orderly paragraphs, the suitor may obtain his remedy for rights, whether of law or of equity. The defendant answers in the same way, admitting or denying the allegations, and may set up his counter rights against the plaintiff of like character.

This system is simple and complete and when intelligently followed will present the contested issues clearly to the court, and this is all that is needed. Pleadings should not be made difficult. This system of pleading includes ample provision for amendment to all parties, with the right to amend extending even to affidavits on which suits

are founded. I believe this is a splendid system to get the case properly before the court. The same procedure brings the case before the city court in actions at law cognizable therein. I do not know of a better system. It cannot be attacked as one of technicalities. A demurrer properly lodged against the petition or answer will still further be of service in eliminating immaterial or irrelevant matter.

Our practice in the trial of cases is free from serious fault in nearly all respects, so far as I can see. Yet, I believe it would be an improvement if the law allowed the trial judge more liberty in expressing an opinion as to what has or has not been proved, or, at least relax the stringency of the rule on this subject now applied to the trial judges. The judge has the power to set aside the verdict of the jury if he is dissatisfied with it as a correct finding; why then, may he not aid the jury in arriving at the correct finding in the first instance? I know this is debatable ground, and I am not intending to take an advanced position, and confess that in the statements I have made on the subject, I have made them *dubitante,* at least as to the exact provisions that should be made in the law changing the present law and making the needed improvement.

I have no complaint against juries, at least most of the time. I have a very friendly feeling for them. I admit that I have been shocked occasionally at a verdict. A juror who makes a verdict in your favor is a "thing of beauty and joy forever," or until he decides some other important case against you.

I believe that our procedure could be improved in some respects and hope to see it done. I think we are making too many suggestions of amendments to the laws governing our procedure. The main trouble is not with the method of procedure in trial courts, but is found after the trial, while the case is being appealed. We are asking too much, and may therefore get little or nothing from the General Assembly. In making my suggestions of improvement, I do so with diffidence and regard only one of them as of much importance. I suggest the following:

1. In a criminal case a formal defect in an indictment or an accusation ought to be allowed to be cured by amendment, with the same right on the part of the defendant, to a continuance, as prevails in the practice in civil cases when amendments are allowed.

2. The defendant's attorney ought to have the right to call his attention, while making his statement, to any matter concerning his defense, which the defendant omits, or else does not make fully clear, and his attorney should have the privilege of asking him questions in the way of direct examination, about the facts of the case, if the attorney thinks it necessary, subject, however, to proper restriction by the court, if the attorney goes too far with the privilege. Cross-examination of the defendant should not be allowed, unless he be put under oath. It is disheartening to see the ignorant person, as it frequently happens, go on the stand and make a full and excellent statement in his own defense, and then put up an intelligent man and see him get embarrassed and "rattled," and talk of the trivial matters in his case, and leave the stand without ever denying his guilt, referring to the important features of his case, or asserting his innocence, although meaning all the while to do so. He is at a great and unfair disadvantage in the trial.

3. Our practice in regard to motions for new trial is indefensible in some respects. The trial judge should have the right to set aside a verdict when an error of law has been committed on the trial that will clearly work a new trial, without requiring that a brief of the evidence be approved and filed. In such a case, the judge, if he deems it necessary, in order to decide the point, should have the power to order such part of the evidence filed as illustrates the point.

I give you an instance which illustrates my idea. A promissory note with a general waiver of homestead in it was signed in the firm name by one member of the firm, without the knowledge and authority of the other partner, authorizing the waiver of the homestead as to him. This note was sued in the ordinary form, a copy of the note being attached. Personal service was performed on each partner, and upon

this suit judgment was rendered by default against the firm and the partners so served. Afterwards one partner took out a homestead for himself and family in his individual property. A *fi. fa.* issued upon the judgment was levied upon the property, and this defendant partner, as the head of his family, filed a claim to the property. When all the evidence was in on the trial, the court directed a verdict finding the property subject to the *fi. fa.*, ruling that the judgment on the note was *res adjudicata* on the question of the right of the claimant, as the head of the family, to have the property homesteaded, and made exempt from the lien of the *fi. fa.* issued on that judgment. In a day or two after making this ruling the judge discovered that he was wrong, but under our practice the claimant was forced to the trouble and expense of obtaining a stenographic report of the testimony, having it approved and filed.

In such a case, the judge ought to have the power to set aside the verdict and grant a new trial on the simple motion for a new trial alone. As the judgment of the trial court granting a first new trial will not be reversed by either of our appellate courts, it follows that the trial judge should have the power, on motion, without a brief of the evidence, to grant a first new trial. The infliction of the expense attendant upon obtaining a brief of the evidence, having the same approved and filed, ought to be spared the movant. I think the amendment of the law on this subject proposed by the Committee on Jurisprudence, Law Reform and Procedure at the last meeting of this Association is upon the right line. With some changes, I would be glad to see it made into law.

4. The General Assembly ought to pass a bill putting all the city courts of this state on one uniform system of procedure. The city courts, in my judgment, are doing good work at far less expense than is incurred by the superior courts in trying the classes of cases of which the city courts have jurisdiction. The city courts form an excellent complement to the superior courts. There may be too many of them, and some city courts may be located where they are

not needed. I speak principally of the city courts in Northwest Georgia, as doing good work and deserving of commendation.

Judgments or verdicts (as may be proper in a case) should be rendered at the first term on all suits on unconditional contracts in writing, and all other suits *ex contractu*, when no defense is filed, as required by law.

The objection I make to our system, which I regard as most serious, is that with reference to the practice in motions for new trial. Generally, as I said, our system is good. It is remarkably free from technicalities. We must have rules and regulations. They are not technicalities. They are necessary to the work of the courts in the proper administration of justice. They are reasonable and all parties must abide and follow them, both on the civil and criminal sides of the court, including the State and State's counsel in criminal cases. The State, in criminal prosecutions, has no just cause of complaint against the procedure. It is liberal enough to the State. Those who call these rules "mere technicalities" and inveigh against them, even to the extent of palliating, if not excusing, mob violence, are, to say the least, very ill advised.

The members of this Association, in pointing out the improvements that may be made in trial courts, should treat the present system of procedure with respect, because, while it is susceptible of improvement, and will be from time to time improved and made nearer perfect, the present system of procedure deserves, and should command, the respect, not only of the Bar, but of the entire people of this State.

I deem it unfortunate that the press of this country has, for some years past, so frequently and so severely criticised the courts and the proceedings in the courts, denouncing the established rules of procedure as "mere technicalities." This course tends greatly to break down the respect of the people for the law, and the courts which enforce it. Some other things have contributed. These I do not care to name now,

but I assert that the hour has struck in Georgia when respect for the law, and the courts created by the law for its enforcement should be fully restored.

Suppose it should be authoritatively published to the world that from this day, for one week, the law in Georgia would be suspended, and courts made powerless to punish crime or protect life or property for that period; what assurance have you that you would ever reach home safe of life or limb or property, or, that when you arrived at home you would find your family, your friends or your property safe and secure?

Anarchy would prevail; murder and robbery would run rampant, and the weak be quickly overcome by the strong. It is the law, and the courts that enforce the law that give you protection; that stand guard over you, your wives and your children by day and by night, and give them the measure of security they have against those that would harm them, hurt them, or make them afraid. It is the law and it is the courts that make this land worth living in.

I would magnify the law; I would laud the courts as the competent and faithful instruments of the law in holding and preserving for the citizens, the blessings of personal liberty, personal security and the right of property.

In a recent case, now famous, the Chief Executive of the State, has given a shining example of faithfulness to the law of this commonwealth, and of honor and respect for the judgments of our courts. He has again lifted the standard high. It behooves all members of this Association as patriotic citizens, officers of the courts and lovers of the law to lend willing hands, brains and hearts in holding that standard aloft, so that when he looks upon it the criminal will tremble, but the law-abiding man take confidence.

APPENDIX K.

PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

PAPER BY W. K. MILLER, OF AUGUSTA.

In view of the wealth of suggestion that has been made on the subject of judicial procedure, as developed by the discussion of our judicial system at the last annual meeting of the Association, one naturally hesitates to make any further suggestion, than that some form of bill be drafted by the Permanent Commission on Revision and submitted to the Association, in order to elicit the views of its members. We are all committed to the theory that courts exist for the administration of justice, and it is the concensus of opinion that there can be no successful administration of justice either civil or criminal without adherence to settled rules of procedure, and to accomplish this result the component parts of the court must work harmoniously under some reasonable rule of decision. As the eminent Chairman of the Committee on Revision at the last meeting of the Association stated that our system of procedure needed revision from the bottom to the top, and as my own circuit judge had attacked this system so vigorously before the Association, there must indeed be need of some change,—if not in preliminary procedure, at least in so far as the same relates to trials in court.

As a rule, the circuit judge does not become familiar with the case that he is called upon to try, until it is developed before him on trial. As a result, errors creep in. If in the progress of the cause he were given the right to direct the procedure, and take part in the selection of the jury under certain circumstances, and thus familiarize himself with the

case, there would be fewer miscarriages of justice. I cannot but feel that our circuit judge is right in his criticism upon a system that provides courts to be presided over by a judge who is practically powerless to try, or express his opinion on the facts at issue; but such are left to the decision of twelve, generally uninformed, and not infrequently, unwilling citizens, who do not desire such a responsibility.

If the degradation of the judge from his common law powers and the corresponding elevation and exaltation of the jury, have put the courts out of working harmony and introduced a degree of uncertainty in the result of judicial trials that should not exist, then it is apparent that some change is a public necessity. But so often has this condition been commented upon, with no resulting change in the law that we might as well assume, that the lawmakers of Georgia prefer to leave the administration of justice in the hands of twelve citizens gathered indiscriminately from the community, rather than in the joint hands of such a jury and a learned judge to advise them in the discharge of their duty in the difficult conditions they are frequently called upon to face.

Even if we assume that there is to be no change in the manner of selecting the judge,—that he is still to remain the semi-political official he now is,—and that the power of the judge, the common law right of expressing his opinion upon the facts is to be continuously denied,—that trials are to continue under practically existing conditions, still sundry changes in the law suggest themselves to me that might facilitate the administration of justice. So frequent is the miscarriage of justice, both in criminal and civil matters, that one is driven to the conclusion, that jurors are either improperly selected, or do not understand or appreciate the matter submitted to them for decision.

Under our system, and indeed under any system of procedure, any person who considers himself aggrieved and desires to apply to a court for redress, must of necessity indict a petition to the court, setting forth the grounds of his complaint. It is but proper to give the person com-

plained against a reply, both on the law and the facts. If the complaint does not state a right of action, the Court should go no further, and such a defense, which we call a demurrer, should be sustained. But if not sustained, and the defendant by his answer denies the allegations of the plaintiff's petition, and an issue is raised, that issue should be decided by some competent and impartial tribunal. Under the common law, this was to be done by a Court composed of a judge and jury working within their proper functions. When a petition for redress is brought under our law, the petitioner is required to set out his complaint in orderly paragraphs, and the defendant is required to admit or deny them, and reply thereto—as he desires. After this has been done, the case is at issue.

STATEMENT OF THE CASE.

An issue having been raised, would it not be wise to require their counsel, not simply as representatives of their clients, but also as officers of court and aides in the administration of justice, to reduce to writing a statement of the case, which should contain the grounds of the complaint, the grounds of the defense, and the facts that are admitted by plaintiff and defendant, and the facts that are in dispute? Such statement should be signed by counsel, accompanied by a certificate that they have made an earnest effort to state in this document the true facts of the case as they understand them. This statement of the case should be submitted to the presiding judge for his approval, who should thereupon determine the issues that should be submitted to and tried by the jury. If his ruling on the issues to be tried was not satisfactory to either litigant, such party could file his exceptions, and they should become a matter of record along with the statement of the case.

This statement of the case should be the document under which the trial should take place, and having been submitted to and approved by the judge, he would necessarily know the character of case to be tried, and could at his leisure prepare his charges thereon. Upon the trial, the evidence

would of course be confined to the issues thus fixed by the judge and upon the conclusion of the trial, this statement should be sent out to the jury together with the instructions of the court. We have something like this in our equity system, which allows questions to be propounded to the jury under certain conditions. If this were made applicable to actions at law, and questions submitted to the jury with written instructions of the court thereon, it would enable the jury to find the facts of the case, upon which a true verdict in the vast majority of instances could be rendered.

JURY, HOW SELECTED.

The judge being thus made familiar with the case that he is to try, the next thing in order should be for him to arrange for a trial before a jury. So far as they govern the trial of cases, all terms of court should be done away, and each case should be a record unto itself. All jury business should be classified by the court, who should endeavor to retain upon the jury the most intelligent and learned men of the community. The court could readily arrange its jury business so as to have commercial cases tried by juries familiar with commercial affairs, insurance cases by juries familiar with insurance matters, cotton questions by cotton men, railroad cases by those familiar with the railroad business, etc., and to insure this the jury should be made up by the court and parties. Our present system in civil cases of submitting a list of twenty-four jurors to the counsel on each side, one of whom as a rule immediately proceeds to strike therefrom the most intelligent and best-informed men on the list, should be changed, and the court, knowing the character of case to be tried, should from the panel or general jury list, select four jurors to try each case. These jurors should not only be impartial, but selected with a view of their knowledge of the subject-matter involved in the issue. They should be subject to challenge for cause. Thereafter the plaintiff and the defendant could, from a list of sixteen jurors furnished as at present, strike four each, and the remaining eight, with the four selected by the judge,

would constitute the jury to try the case. The same plan could be followed in criminal cases. The judge should select four jurors, subject to challenge for cause, and the remaining jurors could be selected by the State and the accused, as is now done.

I, of course, realize that this suggestion to give the judge power to select part of the jury is radical, but it is made as a suggestion for the consideration of the Association. I am not wedded to it myself, but as this is an era of suggestion, of contemplated changes, that we have no power to make, it might as well be considered in the theoretical re-arrangement of our judicial system. The time may come when the trial judge may not be selected, as at present,—when he may not have to seek votes to keep himself in office, when he may be more independent,—and when the people may be willing to confide more in his judgment and discretion than at present. In any event, the present system is not conducive to ideal results, and I submit that any plan by which the best and most intelligent citizens can be kept upon the jury and not stricken therefrom because ignorance is preferable by some party to the cause, should be adopted. Six strikes in a civil case out of a list of twenty-four jurors, as a rule, always keeps off the jury the very best element that should be on it, and any plan by which this can be prevented is desirable.

We seem to forget that courts are not owned by the litigants who bring thither their private affairs to be adjusted at public expense. They might arbitrate outside, but if they fail to do so, and prefer to apply to a court for redress, they should be required to try their causes before the best element of the community, and any system which permits any party to a cause to eliminate this element therefrom is fundamentally wrong. As the judge can no longer express his opinion on the facts, and must submit the questions at issue to the decision of the community, why should the court not call to its assistance the best element of the community?

Indeed, if such a system were in vogue, by which counsel had to put in writing the issues to be submitted to the jury,

and that jury were to be in part composed of the best element of the community, comparatively few cases would be brought to trial. Conditions would be exactly reversed from what they are now. Instead of everything being rushed to trial before a jury, as is now the case, a jury trial would be a comparative rarity.

INSTRUCTIONS.

The jury having been selected and the evidence having been introduced, the instructions of the court to the jury should be reduced to writing and sent out to the jury, either before or after the argument of counsel. Our present system of having the trial judge charge the jury with reference to the Supreme Court and not with reference to the case on trial, as has been so vigorously stated by a circuit judge (see report of 1910, page 120), should be done away. The judge should give a charge on the general aspect of the case, and particularly on the vital issues, as specified in the statement of facts aforesaid. He should submit his charge to the jury in writing, and this should be sent out to the jury. Any verbal charge under the present system in any closely contested case is as a rule rarely understood by the jury. One juror recalls it one way and one another, and they frequently quarrel among themselves as to what was the charge. They do not remember the instructions alike, while if they were reduced to writing and instructed to apply them to the testimony as they recalled it, there would be fewer miscarriages of justice. Jurors as a rule, desire to render their verdict in accordance with the truth and justice of the case, but in order to do this they are more or less hampered. The impossible is expected from them under the present system. To begin with, they are not as a rule informed upon the matter that they are to try, yet they are expected to render a true verdict that will be satisfactory to both parties. How absurd it is to send out the pleadings in the case, the petition and the answer, which the jury rarely read, some scraps of the documentary evidence, and not to send out to them that matter under which

they are sworn to try the case, to-wit, the instructions they receive from the court. I believe that if these instructions were reduced to writing and with the statement of facts hereinbefore indicated sent out to the jury, there would be fewer miscarriages of justice. The cases would be disposed of in one-half the time. The expense to the public would be greatly reduced, and the expense to the parties on a motion for new trial would be inconsiderable. There would be no need of any change in the essentials of our present system as regards a motion for new trial, for where the facts had already been agreed upon as far as possible, and the instructions to the jury reduced to writing, and the evidence limited to the matters at issue, the volume of testimony would be greatly reduced. An appellate court would then see what was the case tried in the court below, and prejudicial error could be readily ascertained, if it existed.

In other words, my suggestions are, to arrange to have the case tried by a competent tribunal before it is tried, and not to try it on a motion for new trial, as is practically the condition under our present system.

APPENDIX L.

JUSTICE COURTS; THEIR CONSTITUTION, JURISDICTION, AND THE PROCEDURE THEREIN.

PAPER BY J. S. SLICER, OF ATLANTA.

Mr. President, Ladies and Gentlemen: The justice court, as constituted, regulated and controlled (or uncontrolled, I might say), by our constitution and legislative enactments, is, I think, a much more important factor in our economic and social status than we usually consider it. No doubt every one of you has from time to time heard many complaints made as to the jurisdiction and manner of conducting these courts, but it seems that no one ever undertakes to suggest what remedies should be brought about and put into effect, and what is ordinarily "everybody's business, is no one's business." From my own experience, and from that of many men that I have come in contact with in business, I think our justice courts should certainly be completely re-organized, if not abolished entirely.

Our justice court was created under our constitution, much after the fashion of the justice court under the common law. I will not attempt to go into the history of the development and growth of the justice court, and of all of its powers and jurisdiction, but suffice it to say that it has been allowed to grow as a child without a nurse, until it is now an unwieldy, overgrown boy that is hard to regulate and conform to the rapidly changing business and social conditions.

Before the greed of commercialism and the combination of capital had done so much to warp and influence the true and honest purpose of the ordinary citizen, whose ambition was the possession of a good name among his fellow-

men rather than the possession of a full purse, the country squire could be trusted to mete out justice between the contending parties in accordance with equity and good conscience and without fear or favor to either side, but the change in conditions and the growth of commercialism has tended to influence men to the remotest corners of the earth, and the attitude of the average man as to his viewpoint in life, and the machinery for dispensing justice between disputing parties, has felt that same influence to some extent, and it should be regulated accordingly.

At first thought, the reforms to be brought about in the constitution, regulation and control of the justice court, seem so numerous that I hardly know where to begin in recommending these reforms other than to recommend that they be abolished entirely, and I believe that the experience of nearly all of the lawyers who practice in justice courts, and most of the litigants, would also recommend that they be abolished. I should say further, that possibly my opinion on the subject is not a fair one for the reason that at least ninety per cent of my practice is what is usually termed "office practice," and that I do not appear in the courts very frequently.

In the first place, I would recommend that the justice courts in cities of over three thousand inhabitants be presided over by men who are well versed in the law, and who, before being eligible to office, should first have practiced law at least two years after having graduated at a law school or having spent two years in the study of law prior to their admission to the Bar. I fix the size of the city at three thousand, because I realize it would be hard to get a man of this kind to hold such an office in a small community, as the salary could not be made attractive enough, but in cities of that size and over, there would be enough business to support one or more justices on a fairly good salary, that would attract young men of ability and integrity. In the larger cities where the services of more than one justice would be needed, a court should be established with a chief justice at its head, and associate justices in divisions con-

trolled and regulated by the chief justice, and as many divisions of the court be created as would be necessary to promptly handle the business of the city. This court should be located in the regular county court house, with a clerk who would have the authority to employ as many assistants as would be necessary, this clerk to be under the direction and control of the chief justice. The clerk should be paid a percentage of the costs collected, which would insure his collecting all the costs due the court, and which would provide enough for his own salary and that of the justices. It would be a very easy matter to calculate the amount of costs which the courts in the various cities would probably collect, as for instance, it is estimated that in the city of Atlanta, there are twenty-five thousand cases to be tried a year, which at an average cost of $3.00 per case, would amount to $75,000. This, you see, would provide a very lucrative salary for the clerk and the justices.

Putting the clerk's salary upon a percentage basis would have the two-fold effect of keeping attorneys from filing suits which they knew did not have merit in them, and providing the funds for the salaries of the justices. I have known of shyster firms who made it a practice to file all of their cases in a certain justice court, to file suit after suit upon outlawed claims and claims which had been barred by discharges in bankruptcy, when they thought that the defendant would probably neglect to file a defense and would overlook the case and in which event they would be able to recover on the suit, but if a defense was filed and the case dismissed, the attorneys knew that they would not have to pay the costs in bringing the suit. This method of procedure would entirely eliminate this evil.

There is no doubt in my mind that justices in cities of over three thousand inhabitants should be paid a salary, and not allowed to depend upon their fees for their income. It is absolutely impossible to eliminate the human element from the mind of the justice when the evidence is close in the cases which he is trying, and in many instances where it is not close, not to be influenced in deciding the case

against the party best able to pay the costs. There is before his mind the question of paying his grocery bill or his house rent at the end of the week, and he realizes it will take a certain number of cases to provide the funds for these expenses, and no doubt his decisions are often influenced and rendered against the party best able to pay the costs, and thus provide him with the necessary living expenses. If, however, the justices were put upon a salary basis, this temptation would be entirely removed and only cases in which there were really merit would be filed and the costs in those cases would amply provide the funds with which salaries of the justices could be paid.

I would recommend that these justices be appointed by the judge of the superior court of the county and not elected by the people, for if they were elected by the people they would again be influenced by the leading politicians in the militia district and would not be in a position to always render unbiased judgments. I do not hesitate to say that I think we can certainly trust the judges of our superior court to pick out for these offices, the men best fitted to fill them.

The chief justice would call the calendar and set down the cases to be tried during the month, assigning the several cases to the several divisions, and assist the associate justices in the trial of close cases and give his opinion on close points brought up in the several cases and thereby do a very great good in trying to get at the justice and merit in each case that is brought up for trial in the justice court.

The amount of the jurisdiction under such justices should be increased to at least $500 and attorney's fees. The reason for this is that a great many people who are averse to litigation, often in disputed claims of sums ranging from $100 to $300 or $400, decide to drop the matter entirely rather than go to the trouble and expense of filing suit in either the city or superior court, where they know they would probably have to wait from twelve to eighteen months before the case is reached, and when it was reached on the trial calendar, would have to go to the court and wait sev-

eral days for the case to come up for trial before the jury, and realize that on account of this delay and on account of the time they would have to give to the trial of the case in attending the court, they would lose more than the amount involved in the suit. I have known of a number of cases of this kind, coming under my personal notice, and no doubt every one of you have had the same experience. You will see therefore that a number of honest men are deprived of the use and offices of a court of justice because of the fact that our practice and procedure governing cases of these small amounts, make it more costly to litigate than it would be to write off the entire claim, when we could increase the jurisdiction of the courts to an amount as high as $500, which would enable these cases to be speedily tried and without the delay and expense incident to a trial in the city or superior courts.

I should not recommend this increase in the jurisdiction, however, without first having provided the justice court benches with able justices who would handle this business and appointed in the manner above indicated.

Jurisdiction should certainly be given justice courts in action of bail trover involving property of the value of at least $500, and foreclosure of materialmen's liens for like amounts. The man now who has a good cause of action in a bail trover suit for an amount less than $100 cannot afford to file the suit in the superior court because of the fact that the time necessary to attend the trial and the expenses necessary in having witnesses to attend and wait upon the court two or three days, in addition to the attorney's fees necessary in such cases, would make the litigation cost him more than the value of the property he wishes to recover.

I should certainly recommend that cases tried before the justices, appointed as I have above indicated, be carried by appeal direct to the Court of Appeals and not by way of the superior court. Justices in such cases would be able to render a fair and legal judgment and one that will stand on an average with the decisions of the city and superior courts.

Pleadings should be required in cases involving amounts

from $100 to $500, but I would make the pleadings as simple as possible, and entirely free from useless technicalities.

It should be the purpose of the courts to try to get at the right and justice in the cause of action and to let in any reasonable evidence bearing upon the point at issue that can be let in, and not try to see if they cannot find some little useless technicality on which they would have some ground to throw the case out of court and go on to the trial of the next case. It should be the duty of the courts to try to right the wrongs between their fellow-men rather than create, accumulate and perpetuate legal technicalities in matters of pleading and evidence and assist the wrongdoer in defrauding his neighbor.

I hold that the trial judge who recognizes the rights or wrongs in a case, but who allows some shrewd lawyer to take advantage of a technicality, thereby allowing one party to the litigation to take advantage of the other, is thereby a party to the fraud, and is not worthy to sit on the bench of the courts of this or any other State.

A discussion of this character does not afford an opportunity to go into minute details of the working-out of the several reforms which I have recommended, but I earnestly insist that something should be done to improve this important branch of our jurisprudence. Every one of our clients, it matters not how large the corporation, has its share of small cases and the proper or improper handling of these cases involves a certain percentage of their profits, to say nothing of the humble citizen, all of whose cases are usually confined to the justice court and who has just as much right to demand that his case be fairly and rightly tried according to the law, as a large corporation.

The powers of the justice courts, as they now exist, are too great in many instances because of the lack of ability of the man who holds the office, and not great enough in other instances if we had the proper man filling this office.

I cannot speak for the country justice's court, as I have never had any practice there, and as I do not think one

should try to advise on a subject he knows nothing about, but I am sure that if the matter were given proper consideration, a method of reform could be adopted which would be satisfactory to the litigants in the country districts; but as for the justice courts in the cities, I insist, gentlemen, that some such reform as I have suggested, be recommended to the Legislature, and its adoption urged.

The justice courts are, as I have said, a most important institution in our social and political status, and as they are now conducted and managed, they are the laughing stock of the average business man, and are referred to in words of contempt by many of the best and leading citizens of our State.

It is our duty to use our best efforts to bring about some reform that will take away this stigma from our body politic, and it is certainly the duty of the lawyers and of this Association to do all they can to see that some reform is adopted by the Legislature, in order that the justice courts of this State will conform more to the developed condition of business, trade and commerce, as it is conducted to-day.

APPENDIX M.

PROCEDURE IN CRIMINAL CASES.

PAPER BY A. W. EVANS, OF SANDERSVILLE.

It can be said that one of the best criterions by which a country may be judged is the method and extent of the enforcement of its criminal statutes. Civil rights, the security of property and of individual rights, of life and liberty, all finally depend upon the proper enforcement of our criminal statutes. In that country where violations of the criminal laws are strictly and promptly enforced, personal liberty is most firmly established and property rights generally recognized and respected. It would be trite to say that total failure in the enforcement of criminal statutes would mean chaos and anarchy. It does not follow, however, and it cannot be contended that the multitude of criminal statutes and the severity of the prescribed punishments for their infractions would necessarily mean that the highest civilization had been reached or the ideal accomplished. On the other hand, there is some truth in the old adage that "that country is best governed which is least governed." I am not of that number, whose name, I fear, is legion, who maintain that our country is the worst governed on earth and who in support of their pet theory, cite certain erroneous and entirely misleading statistics in an endeavor to prove that the United States is the most sanguinary nation on earth, and who, with an unpatriotic persistency, make an odious comparison of the number of homicides committed in America as compared with England or Germany, seemingly oblivious of the fact that even though their exaggerated figures be absolutely true, the very situation there is the result of centuries of training and experi-

ence and has been wrought out by blood and suffering, and this English and German respect for law and restraint from homicide has been engendered only after years whose history is dark and bloody.

The careful student of history, when he contrasts what has been accomplished on this new continent as regards law enforcement in four centuries with that of a corresponding or similar period of history in either England or Germany, can but be impressed with the apparent fact that this comparison is not entirely to our discredit.

The proper enforcement of law is evolutionary. It is not the product of a year, or a term of years; neither does it springs spontaneously from a confederation of men forming a society, nor is it the immediate result of the action of legislative bodies, whatever may be their dignity and wisdom, or the correct adjudications of the court of last resort.

The procedure in criminal cases, as we now have it, comes from all these sources and from others. No law will be enforced unless it is backed by a healthy and favorable public sentiment. All the people may not believe in it, or even a majority, but a belief in the wisdom and justice of the law must be held by a considerable number of the people forming the State, and whose influence is felt in shaping her policies.

It follows, therefore, that the best and most effective way to secure prompt and effective law enforcement is to inculcate into the body of the people a wholesome respect for all law and in the wisdom and justice of the State's Criminal Code. Older nations, by the persistent efforts and noble examples of good men, instilled into their people this respect and regard for the law itself.

Religious influences have played a large part and have done more in the creation of a healthy public sentiment for law enforcement and in engendering a respect and regard for the law than perhaps all other influences combined. When a man's heart is filled with the love of God, the author of all good and law, he is then farthest from a breach of the law itself and desires most to inculcate in the heart of

his fellow man the same high regard and love for the law.

There are doubtless many points of weakness in our method of procedure in criminal cases and many suggestions have been made by which these weak places may be corrected. Among them, it has been urged that the defendant and the State should be placed on an equality in the matter of strikes or challenges of jurors. This contention is evidently based on the idea that the State is at a disadvantage at the trial of a case.

It has even been asserted, by very respectable authority, that by reason of this very thing, the percentage of conviction in criminal cases has steadily declined until it is now less than five per cent. of the cases actually tried. I know not the source from which this distinguished jurist obtained his figures, but with an intimate knowledge of the situation in Middle Georgia, I challenge the truthfulness of his statistics. I have recently taken the pains to gather some statistics myself on this line, using the records of the Superior and City Court of the County of Washington, with which I am most familiar, and which is certainly typical of Middle Georgia, and perhaps all of Georgia, and the figures covering a period of four years, beginning in 1906, accurately taken, disclose the following:

In the Superior Court, there were 267 indictments acted upon, which resulted as follows:

Convictions, 127; *nolle prosequis*, 70; acquittals, 42; discharge on demurrer, 8; no arrest, 20. Total, 267, or a percentage of forty-seven and one-half per cent of convictions all told, or fifty-one percent of those actually tried.

In the City Court of Sandersville, there were 454 indictments and accusations acted upon, mostly accusations, which resulted as follows:

Convictions 174; *nolle prosequis*, 142; acquittals, 97; discharge on demurrer, 5; no arrest, 36. Total, 454, which shows a percentage of forty-one per cent of convictions of those actually tried. It should be borne in mind that the majority of the cases disposed of in the City Court arose on accusations where the prosecutor, smarting under some per-

sonal grievance, rushes into court and swears out an accusation, often with little or no foundation, and afterwards is ready to abandon the prosecution, and also that many men still seek to make the machinery of the courts an engine of oppression, and use it as a means to wreak their private spleen. One cannot say that this proportion of convictions, to-wit, nearly one-half of all cases tried, is too small or augurs evil for the perpetuity of our institutions or argues that our procedure in criminal cases is ineffective or in any sore need of reformation.

And it is to be considered in the light of these figures that in a number of cases where *nolle prosequis* were entered, they were in settlement of cases upon payment of costs and allowed by the court after a full investigation into the facts of the case.

I firmly believe that a close investigation of the dockets of our courts of this State would prove conclusively that the percentage of convictions is really in about the correct proportion, and is but little less than it should be, when everything is weighed.

In my humble judgment, the greatest need for a change in our procedure in criminal cases is for the repeal of what is commonly termed the "Dumb Act," that law by which the court is forbidden from an expression of any opinion on the facts of the case. By the operation of this law, able judges are deprived from giving to the jury the benefit of direct and positive instructions on the real issues of the case. They are indeed rendered dumb and tremble when they undertake to instruct the jury, practically rendered moral cowards to such an extent that their instructions are stereotyped generalities and ineffective commonplaces, useless either as an intelligent direction to the jury or as an aid to their minds in reaching the truth of the case under investigation.

The earlier volumes of the reports of our Supreme Court, issued before the passage of the "Dumb Act," show that of the reversals of the judgments of the lower courts in criminal cases, the overwhelming majority was for errors

in instructions on substantive law and but a few for error in the instruction of the jury on questions of fact, while of the reversals since the passage of that Act, the largest number are for expressions of opinions on what has been proven in the case, most of which was in all probability harmless, but under the mandatory wording of that law, a new trial must be granted. In the Federal Courts, where this rule does not obtain, improper convictions seldom result, and it must be conceded, a more wholesome regard and respect for that court exists than for our State courts, and to this one thing is due much of that difference. A learned, capable and conscientous judge will never suffer himself to become so arbitrary and unreasonable and unjust as to take advantage of the man on trial, and if permitted to give to the jury instructions on the facts of the case, will be able to materially assist them in reaching a correct verdict.

The rule in cases of criminal assault should be changed so as to allow the victim to testify by interrogatories and thereby save her the humiliation of having to face a morbid crowd and submit to the mortification of rehearsing the awful details of the crime for their delectation. Oftentimes, a mob is formed and incited to execute summary justice by the appeal of relatives of the victim, that by that means she may be spared the horror of a public recital of all the harrowing details of the terrible crime.

The weakness or inefficiency of our system of procedure in criminal cases, if indeed there is any serious weakness in the system, lies not in the so-called delays of the law, for under our system of jurisprudence, in the court is lodged the widest discretion in so far as bringing the offender to a speedy trial is concerned. Sometimes, even this apparently salutary provision of our law is abused, where, for instance, when a regular term of the court is to convene within a short time after the commission of the offense, which has aroused and excited the people, the judge, in answer to an unreasonable demand for an immediate trial, calls a special term within a week and rushes the culprit to a trial and

again in the exercise of that discretion which the law allows him, overrules the motion to continue, made in order that he may have an opportunity to procure his witnesses and that the minds of the excited populace may become composed, and forces the defendant to a trial which results in a mere mockery and ends in the conviction and execution of the friendless defendant, when a calmer and more deliberate investigation would have disclosed his complete innocence. Our system of procedure in criminal cases is as swift as it should be to comport with justice and moderation and regard to the due process of law.

"The technicalities of the law" afford to the layman a fruitful source of adverse criticism and much misdirected comment. All law is from its very nature, technical. The rules which govern business men in the active prosecution of their business, the law of mechanics and of the sciences, are intensely technical. The business man who is most particular and punctilious in the observance himself of the technicalities of his business, whether mercantile or mechanical, is often loudest in his criticism of the technicalities of the law, and most impatient in his demands for their non-observance by the courts. All orderly procedure must inevitably be directed according to a set of fixed rules, and the best order of results when these rules which are the evolution of the world's best experience and wisdom, are most religiously observed.

The lawyer should not be condemned who invokes every single provision of the law favorable to his client's interests and insists upon his client's case being tried and adjudicated according to fixed rules in their strictest application. His duty to his client should demand this. The highest court should not be made the target of adverse comment because in passing upon cases carried there for review that court requires a compliance with the law and gives to the accused the benefit of that which the law guarantees, a fair trial according to the established rules of law. In an endeavor to render the law less technical, the danger is that the pro-

cedure will become loose, and too wide a scope will be given to construction and the certainty of law, both in its apprehension and enforcement will be imperiled.

Radical or sweeping changes in the procedure of our courts is not desirable. That which has taken centuries to build up should not be destroyed at one fell swoop.

By a repeal of the Dumb Act, and again restoring our courts to the lofty position they once occupied, and again clothing them with some real functions to discharge, and placing the judges where they can be of intelligent assistance to the jury in making up their verdict, the greatest need will be met and little or no further changes will be necessary. Almost as a matter of course, the repeal of this Act will necessitate a change in the prevailing method of the election of judges—only men of superior ability, splendid intellect and unassailable character should be elected to preside over our courts and to administer the law under this liberal authority—their term of office and salary should be of sufficient length and size as to command the best ability and to retain it when once secured. Then abolish all city courts and create enough superior courts, with frequently recurring terms, to dispose of the business with reasonable dispatch.

When this shall have been accomplished, the enforcement of criminal laws will follow, respect for all law felt and established everywhere, our courts will be venerated and respected and the security of liberty and property forever maintained.

APPENDIX N.

A CELEBRATED CASE—THE MYRA CLARK GAINES LITIGATION.

A PAPER BY J. CARROLL PAYNE, OF ATLANTA.

I do not consider that I could better introduce this remarkable case to you than by quoting the concluding sentence of the opinion delivered by Mr. Justice Wayne in the case of Gaines v. Hennen, 24 Howard, December term, 1860. He said: "When hereafter some distinguished American lawyer shall retire from his practice to write the history of his country's jurisprudence, this case will be registered by him as the most remarkable in all the records of its courts." When this opinion was delivered he considered the litigation at an end, and yet this case continued to occupy judicial attention, both State and Federal for thirty years thereafter. I will say here that this paper is not an anticipation of the distinguished American lawyer.

The close of the eighteenth century found residing in New Orleans—then a small town—a person named Daniel Clark. He was an Irish gentleman, born in 1766, in the County of Sligo, but educated at Oxford, England. At the age of twenty-one he came to New Orleans to inherit considerable property left him by an uncle. He is described as a man of no ordinary character or influence upon those who were about him. His natural fitness to control became habitual as his wealth and standing increased, and was exercised upon and involuntarily yielded to by all who associated, or who were in business with him. Physically attractive, mentally strong, with a superior education, he was a man of high qualities but of no rigor of virtue or self-control. Energetic, enterprising, courageous, affectionate and gen-

erous, but with a pride which had yielded to no mortification, he stood the foremost figure in New Orleans at that time.

He was much beloved for his benevolence, and his pecuniary integrity was unquestioned. He became early an actor in the events of his day and country, a leader of party there, and connected either by concert or opposition with all of the public men of his time. We are indebted to him more than to any other man for the acquisition by the United States of the Territory of Louisiana from France, an area of country extending from the Gulf of Mexico to the extreme northern boundary of Minnesota, and from the Mississippi River to the Rocky Mountains. He had been Consul of the United States there before the annexation, and in 1806-8 he represented the Territory in Congress, as the first Congressman ever sent by Louisiana to represent her in the national councils.

Everywhere his associations were of a marked character and with people of distinguished social importance. He was engaged in commercial affairs of vast magnitude, extending from New Orleans to Montreal, with branch establishments in New York, Philadelphia and Baltimore. Mr. Clark died in New Orleans in August, 1813, at the age of forty-eight, and was commonly reputed to be a bachelor and a very wealthy man. He was engaged at the time of his death to a very prominent lady of that city. He made a will, dated 1811, two years before his death, in which he left all his estate to his mother, who had come to this country and was then residing near Philadelphia. Of wife, or child, or children, legitimate or illegitimate, this will made no mention whatever. His executors were Richard Relf and Beverly Chew—his intimate friends, and both prominent and wealthy men.

A few hours after his death a friend, Chevalier de la Croix, made judicial declaration "that he had strong reason to believe and did verily believe, that a subsequent will had been made, and that he was interested in it." He petitioned the probate court that each one of the notaries in the

city of New Orleans might appear before the court immediately in order to certify if there does or does not exist in his office any testament or codicil or sealed packet deposited by the said late Daniel Clark." (In Louisiana wills are usually placed in the custody of the family notary.) No such will was produced or found, and nothing more was heard of it for years. The will of 1811 was therefore probated, and under it Relf and Chew—named as his executors—gradually disposed of his estate.

Soon after the time that we first find Clark in Louisiana, there was living there a native of France, named Jerome des Granges. He made some pretensions to family importance at home, but in New Orleans was keeping a confectionery shop, where he sold syrups, liqueurs and cakes. He was somewhat advanced in years and had married a young person unknown to society, name Zulime de Carriere —not at that time over fourteen years of age—and was living with her as his wife. Zulime as a young woman, though married, stood behind the counter of the pastry shop and served the public with liqueurs and small cakes—eaten according to the custom, even now obtaining in New Orleans, in the shop itself. She attracted all by her remarkable beauty of face and figure, her vivacity and her wit. Her nature was passionate, her manner enticing, and her habits somewhat questionable. With the frivolity of her race, she united an indifference to the proprieties of life, which from a worldly standpoint was more excusable, owing to her environment, than we may now imagine. Her subsequent conduct was therefore the logical result of a temperament and character largely the product of the age in which she lived, together with individual moral weakness and great temptation.

With Zulime, Clark became acquainted. She was dazzled by his great wealth, high position and personal attractions, and he formed an illicit connection with her about the year 1801. In the spring of that year, at the solicitation of Clark, des Granges, her husband, sailed for France to attend to some business connected with his wife's family. While

des Granges was absent in France, Zulime was sent by Clark to Philadelphia, with letters introducing her to his partner, Mr. Cox. These letters informed Cox of her condition, and requested his care and attention. A girl was born, named Caroline. She lived in Philadelphia during her childhood. Her expenses were paid by Clark through Cox, and she was finally married to a gentleman named Barnes and disappears from this history. Madam Despau, a sister of Zulime, was present at the birth of this child. Clark himself was present in Philadelphia some time during 1801 or 1802—a very important fact, as will be seen later on. So soon as was prudent Zulime returned to New Orleans and immediately accused her husband, who had returned from France, of bigamy; instituted proceedings against him in the Ecclesiastical Court—which were dismissed without proof of the accusation, and des Granges temporarily left the country. To explain Zulime's trip north it was given out that she went to ascertain whether her husband had a living wife, as she heard he had been married in New York. At this point of the history arose the great question in all subsequent litigation, but entirely unheard of by the world at that time, to-wit, whether anywhere about this time, that is, between 1802 and 1803—after the birth of Caroline—any marriage ceremony had been performed between Clark and Zulime while he was in Philadelphia. It was proved to have taken place by Madam Despau, Zulime's sister, who was present at the ceremony, but denied by Mr. Cox, who lived in Philadelphia. In 1804 or 1805 Zulime gave birth in New Orleans to another daughter, Myra, the litigant in all this prolonged controversy. When she was but a few days old she was taken away from her mother and placed in the family of a Mr. Davis, reared as his daughter, whose name she bore, and under which name she was married. Zulime lived in an elegant establishment, supported by Clark, but he had his own home where he resided.

In 1806 he went to Congress, about which time a quarrel took place between Zulime and himself; he had heard things

about her reputation, she had heard he was paying his addresses to a young lady of wealth and position in Baltimore. Clark was attentive to and did address Miss Caton, of Baltimore, who afterwards married the Duke of Leeds. Zulime, angered at this indication of abandonment, married a Mr. Gardette, of Philadelphia, whither she had gone, in August, 1908. Before all this occurred, however, and some two years after her alleged marriage to Clark, to-wit, about 1805, Zulime filed a suit against des Granges, in the District Court of New Orleans, setting forth she was his lawful wife, and asking for alimony, in which she obtained judgment. She was never divorced from him. Having married Mr. Gardette, in 1808, Zulime lived in Philadelphia for twenty-three years as his wife. After his death, she returned to New Orleans and lived there respectably for many years, and during the pendency of a part of this great litigation. She transferred all rights she might have in the estate of Daniel Clark to her daughter Myra, but singular to relate, was never called as a witness by her daughter to testify as to her marriage to Clark, though Myra's entire case depended upon proof of that fact; she never made any claim to any part of his estate, and never declared the fact of marriage to any one who did testify.

Myra left New Orleans when a child, and went to live in Philadelphia; she was known as Myra Davis, having taken the name of the family by whom she was cared for, and she never discovered her real paternity until she married Mr. Whitney, with whom she lived for some years, and after his death she married Gen. E. P. Gaines. Clark placed in Davis's name a large amount of real estate, apparently without any reservation, but it really was a secret trust for Myra, and the trust was executed. Clark executed also to two of his friends, Bellechasse and de la Croix, blind trusts for Myra, creating no legal right in her, but simply imposing an honorable claim on the conscience of his friends, nor did his friends prove false to the trust imposed.

Col. Davis lived in Philadelphia, it so happened, but a few doors from Zulime, then Mrs. Gardette, who visited

his house once only, but never at any time saw her daughter Myra, save on one occasion, when she met her on the street with Mr. Davis, not, however, speaking to her, though she addressed some remarks to Mr. Davis. "But she looked very hard at her," adds the witness.

Myra, as was stated, when nineteen, married William Wallace Whitney, of New York. A short time after their marriage, Whitney, in reading over some old letters written Mr. Davis, was struck by an account in one of them from a person named Bellechasse, then a resident of Matanzas, Cuba, of a will made by Daniel Clark just before his death, in 1813, which was said to have been fraudulently suppressed, and by which Myra, who was then a little girl and now a bride, had been made sole devisee by Clark of all his vast property. His imagination became fired by this discovery and visions of great wealth disturbed him. Whitney and Myra visited Bellechasse, got definite information from him, sailed for New Orleans, and learned that this lost or destroyed will had been seen or read over to a Mrs. Harper at one time, at another to Pierre Baron Bois Fontaine, both of whom were willing to swear to its contents, as was Bellechasse, who had seen and read it. Besides this, de la Croix, already mentioned as having caused the notaries to be summoned in 1813, added his voice to the others to swell this chorus announcing the perpetration of this fraud against Myra, the only child of Clark, who had thus far so many years been deprived of her patrimony. Baron Bois Fontaine swore that Clark acknowledged to him, both before and after the birth of Myra, and as long as he (Clark) lived, that she was his legitimate daughter, and that he died with that declaration on his lips.

Fortified with this evidence, Myra, aided by her husband, twenty-one years after the death of Clark, her father, and the probate of his will of 1811, began a suit which lasted for over sixty years. If the imagination of the novelist has ever created in fiction any tale of litigation for both a name and a fortune which in any way compares with this true history of Mrs. Gaines' controversy, either in duration, over-

whelming opposition, or perseverance and fortitude in the face of general public skepticism and condemnation, I have never heard of it.

The first appearance of Mrs. Gaines in the courts was two years after her marriage with Whitney, up to which time, as has been stated, she was ignorant of her true paternity. In 1834, she intervened in the Probate Court of New Orleans in a pending suit against the estate of Clark. She claimed to be the sole heir of Daniel Clark, and asked that his will of 1811, be set aside and annulled. She also alleged that he had made another will in 1813, but made no application then concerning this will and no claim under it. The plaintiff was non-suited, and the proceeding ended in 1836. In the same year Myra and her husband filed a bill in the Circuit Court of the United States against Relf and Chew, executors of Daniel Clark under the will of 1811, and against Patterson and many others, occupants of land belonging to Clark at his death, but subsequently sold by his executors. This suit was pending in the Circuit Court and the Supreme Court of the United States until 1852, when it was finally dismissed by the Supreme Court.

In 13 Peters—the first time this controversy appeared in the Supreme Court—the proceeding was a petition by Mrs. Gaines for a writ of *mandamus*, to compel the United States Circuit Court to hear her case according to the equity rules of the United States Courts; the Circuit Court having declared that it would be governed by the rules of practice obtaining in the State Courts of Louisiana. Mr. Justice Story, as organ of the court, says: "It is understood to be the settled determination of the district judge not to suffer chancery practice to prevail in the Circuit Court. It is the duty of the Circuit Court to proceed according to the settled rules of chancery practice, but a refusal will not permit us to issue a *mandamus*. It is not the appropriate remedy, which is by appeal to correct his errors and irregularities."

In Gaines v. Relf & Chew, *et al.*, 15th Peters, the case came up by virtue of the judges of the Circuit Court having differed in opinion. Whereupon the case was ordered

certified to the Supreme Court; the question being: does chancery practice prevail, and should it be extended to litigants in this court and to this case?

The reason of the doubt was owing to the fact that by treaty of cession of Louisiana, the laws then in force were to remain the law of the land, and there was no such thing as chancery practice under the civil law. Mr. Chief Justice Taney said in this case: "There is no power in the Supreme Court to compel the Circuit Court to proceed according to established equity rules. All this court can do is to prevent proceedings otherwise, by reversing them when brought here. It is a matter of extreme regret that it appears to be the settled determination of the District Judge of Louisiana not to suffer chancery practice to prevail in the Circuit Court of Louisiana in equity causes, in total disregard of repeated decisions of this court, and the rules of practice established by the Supreme Court to be observed in chancery practice."

In 2 Howard, 619, for a third time, Mrs. Gaines carried up the case, this time upon a demurrer that the bill was multifarious, which had been sustained below, there being over one hundred defendants named in the bill. This was overruled and the case remanded to be proceeded with.

Proceedings were carried on separately against Patterson, one of the many defendants, and the decree in the lower court was adverse to him, but failed to decide the question of Mrs. Gaines' legitimacy. On appeal to the Supreme Court of the United States, the decree was reversed, and as the question of Mrs. Gaines' legitimacy was for the first time discussed, we will consider that decision at some length.

This case is entitled Patterson v. Gaines, and is found in 6 How., p. 550, and is the fourth time that the case had been before the Supreme Court.

The substance of the issues involved in this case were: first, the marriage of Daniel Clark and Zulime des Granges; second, the legitimacy of the child Myra—now Mrs. Gaines, her first husband having died—as offspring of that mar-

riage, and third, the validity of the sales made by the executors under the will of 1811, which the bill declared to be invalid.

The marriage was denied in the answer, but even if it took place, it was contended that Zulime des Granges had a husband alive at that time, from whom she had not been divorced. To meet the latter point Zulime's sister testified that des Granges had admitted to them himself that he had been guilty of bigamy, because he had a living wife when he married Zulime.

The court held, Mr. Justice Wayne as organ, that Daniel Clark had actually married Zulime in Philadelphia, and that her first husband, des Granges, was a bigamist, as he had a living wife when he married Zulime. Hence this marriage was void, and she was legally capable of marrying Clark. "A void marriage," says the court, "imposes no legal restraint upon the party imposed upon from contracting another, though prudence and delicacy do, until the fact is so generally known as not to be a matter of doubt. Mr. Clark doubtless knew this, but from his pride and temper, as his character has been disclosed, was it not probable, not to say natural, that such a man, anticipating his return to Louisiana, would resort to the course he pursued to keep his feelings from being wounded until a judicial sentence had restored his wife to the unequivocal position enjoyed by her before the imposition of des Granges? All of us know it to be true that concealment is as frequently the refuge of error as it is of crime, and that men of the world shun more than anything else the exposure of their follies, more especially such as the world thinks bear upon the honor of the most delicate relation which a man can form in life. It is not a fiction that men have been situated as Mr. Clark was, who have died, without disclosing, as he did, even in behalf of their unoffending children, such a relation, and that women have been found to bear it. Hence we do not think any presumption of illegitimacy arises from the concealment of the marriage, the living apart of Zulime and Clark, or the separation of the child from its mother. The events which fol-

lowed embittered Mr. Clark's life, and caused him to say to Bois Fontaine, if the witness is to be believed, that he would have acknowledged his marriage if Zulime had not afterwards married Gardette, and he frequently lamented the fact, but considered Zulime not to blame. The same witness says that on his deathbed, in possession of his senses, he spoke of his daughter, and declared that she was his legitimate offspring. Time with him was near its end, and eternity looked him in the face, the cloak of concealment was thrown from him, and the truth was told."

The court also held that the sales by the executors were void, the purchasers had no titles, and that the Statute of Limitations did not run against Mrs. Gaines.

Let us glance over the evidence in this case and draw some conclusions of our own from the testimony, which is most voluminous.

Myra says she was kept in ignorance of her true name for a period of twenty-six years, and Davis, the man entrusted by Clark with the sacred deposit of his child, who loved and cared for her, says the same thing. Now if Davis had not known and ascertained that Myra was an adulterine offspring, incapable by the laws of Louisiana of receiving the munificent bequests of Clark, and that her claims founded on Clark's latter conduct, that is, the acknowledgment of her, were untenable, how can his treatment of Myra be considered in any other light than as a shameless abandonment of his solemn trust? If Davis suppressed the true history of Myra with a conviction that its knowledge would be her triumph, words could not be found adequate to the denunciation of his conduct, yet he loved and cared for her, turned over to her when she married the property Clark had entrusted to him, was a strong witness in her behalf, and had no possible motive to so deceive her. We think the explanation of his conduct is to be found in the fact that Davis knew this unfortunate offspring of guilty parents to be banned and barred by the policy of the laws of Louisiana, and that to acquaint her with the intentions of Clark toward her would be to lead her into endless and idle litiga-

tion. Neither Davis nor his wife attempt to explain their conduct in keeping Myra ignorant of her rights, if they believed she had any.

In 1811 Myra was five years old, and living in New Orleans, as Clark well knew, and yet at the time of his undertaking a sea voyage he executed a will, heretofore mentioned, leaving his entire estate to his mother and wholly omitting any mention of Myra. Why did he overlook Myra in that will? Because he had by secret and law-forbidden trusts, already provided for her; he was not unmindful of her claims, nor did he wish to forget his young and innocent offspring. He executed various deeds to his friends, as has been heretofore mentioned, for her benefit. Who can believe that an anxious father could thus hazard the whole property designed for his helpless and lawful child, by blind confidence in the honor of human beings, when, by will or deed direct to her, he could guard her rights effectually and beyond contingency, if she were legitimate?

A satisfactory explanation of these acts consistent with the claims of Mrs. Gaines cannot be made.

If, however, Clark knew her to be the offspring of Madam des Granges by himself, though not married to her, then his conduct can be well understood, for by the laws of Louisiana such offspring can receive from its parents nothing but alimony, either in the shape of donations *inter vivos* or *mortis causa.*

This statutory interdict was the natural reason and cause of Clark's making his will of 1811, as he did, without even mention of his daughter Myra, yet creating blind trusts for the benefit of this same child, as this was the only method by which he could provide for her, under the laws of that State.

Clark was, beyond controversy, a high-minded and warm-hearted man, whose conduct must be judged by the time in which he lived, and especially by his surroundings. There are other acts of his which go to destroy the theory that he considered her his legitimate daughter, such as the secrecy with which her birth was guarded (but one or two knew

of it), and the haste with which he tore the tender infant from her mother's breast when he delivered her to the Davis family for rearing; also his never suffering this child to dwell beneath his roof, and lastly, his attempt, after his pretended marriage with Zulime in Philadelphia, to marry Miss Caton, of Baltimore. This, to a man like Clark, would have been the last thing on earth he would have attempted to do if he were already married. The truth is, the inconsistent will of 1813, recognizing Myra as his lawful child and universal legatee, arose from the increase of affection for his little girl, who daily fastened on his heart more firmly with the youthful tendrils of her affection, so that he madly conceived the idea of making a will, declaring her to be his lawful offspring. This pious fraud was frankly avowed to his bosom friend, Chevelier de la Croix. (See his deposition in 6 How.)

Look at the conduct of Zulime, his pretended wife. If she were Clark's wife, as was declared by her sisters, she afterwards committed rank bigamy in marrying Gardette while Clark was alive; and according to Cox's testimony, a friend of Mr. Clark, she said she only had Mr. Clark's promise of marriage. Thus the acts of both Clark and Zulime speak trumpet-tongued against the theory of marriage between them. Is it not singular that but one witness can be found to testify to a marriage of such a man as Daniel Clark? That he lived twelve years after this interesting event, and yet amidst all his family and friendly letters, which are as abundant as the leaves of the forest, there can be found not the most distant reference to this most important fact?

It is undoubted that Caroline, the first born of Zulime, was the fruit of the intercourse between Clark and Zulime, the mother of Myra, and it is also true that Madam Despau, the sister of Zulime, and the universal witness of everything required, was shown to have perjured herself in regard to Caroline. Madam Despau witnessed the marriage of Clark and Zulime, she saw Caroline born, she was the one to whom des Granges confessed his bigamy. By her tes-

timony her sister, the mother of Myra, had three husbands, all living at the same time—des Granges, Clark and Gardette.

For the innocent child, fighting for her rights, I feel every sympathy, but justice to the truth requires that in this narrative nothing be suppressed. How often is it that the innocent offspring is made to suffer for the acts of parents, and if ever parents deserved condemnation, here or elsewhere, these parents have deserved it. A mother, who for the world's esteem would discard from her maternal breast two helpless infants and never even again look upon her own offspring—a mother, who by the testimony of her own daughter, stands convicted of adultery before her pretended marriage with Clark, and with bigamy afterwards—such a mother is above the judgment of human tribunals; and what shall we say of the conduct of Clark—if Myra be his lawful child and Zulime be his lawful wife—courting another woman while his wife was living, and at his death forgetting that she had been his wife, participating in the crime of separating two infants from their mother, his wife, to save the paltry pride of that mother, or his own, because she had not secured her divorce from des Granges. Such a man, if Mrs. Gaines were right, should have his memory consigned to infamy forever.

It is true, however, that the web of destiny woven by these passionate lovers, clings around this unfortunate but innocent child, and the dreadful past cannot be recalled. After the lapse of sixty years, the light of truth shines upon this dark and passionate intrigue, revealing all its deformity upon the highest judicial records in the land, and showing the dying effort of Clark to efface the stain which his own wild passions had placed upon his child at her birth.

The other defendants in this suit have always insisted that this Patterson case in 6 Howard was collusive, and the facts lead one most strongly to that conclusion. Thus for thirty-nine years after Clark's death, only one piece of property had been recovered—that from Patterson—by this decision, but the declaration made as to Mrs. Gaines' legit-

imacy by the court gave great encouragement to continue the litigation. As none of the other parties defendant were bound by the decision against Patterson, Mrs. Gaines pushed her bill, pending in the Circuit Court against Relf and Chew, but after a prolonged hearing the bill was dismissed and went by appeal to the Supreme Court. The bench was, with a single exception, composed of the same judges who had decided the Patterson case, and yet how different is their finding. The case sounds Gaines v. Relf et al., in 12 Howard, being the fifth appearance there, and covers one hundred and twenty-six pages of that volume. The record covered many thousand printed pages. The complainant, Myra Clark Gaines, sues as the only legitimate child of Daniel Clark. In this case the court, through Mr. Justice Catron, held that the marriage between Clark and Zulime des Granges was not proven, because the witnesses to it were not worthy of belief, and secondly, that it was shown she was the wife of des Granges, but that the charge of bigamy against des Granges was not established, and therefore she could not have legally married Clark in 1892, as claimed, and hence the child Myra was an adulterous bastard.

The decree of the lower court dismissing the bill was therefore affirmed. Mr. Justice Wayne, who delivered the former opinion in 6 Howard, dissented, as did Mr. Justice Daniel. In this case particular stress was made by the court upon the following facts: The conduct of Zulime in declaring herself the wife of des Granges and suing him for alimony three years after her alleged marriage with Clark, in which proceeding she swears she is des Granges' wife; the inconsistency of marrying Gardette with the belief that she was Clark's wife, and the utter improbability that Clark would, while in the United States Congress, have offered marriage to several ladies of high character and connection, if he knew he was already married.

In showing that the two sisters of Zulime are not worthy of belief, the court says: "It is true, beyond question, that these witnesses did know that their sister Zulime went north to hide her adultery, that she did delude her absent

husband who was and had been for over a year in France, where he had been sent by Clark; that she did impose on him the mendacious tale that her sole business North was to clear up doubts that disturbed her mind about his having another wife. These facts they carefully conceal in their depositions. They swore positively that Caroline, the child born in Philadelphia, on the occasion of this visit, was the child of des Granges, when they knew he had not seen his wife for more than a year." We have here a judicial condemnation for want of veracity of the only witness of the pretended marriage of Clark and Zulime and also her sister. What is possible from a legal standpoint to rehabilitate them with the garment of truth, and yet, in later decisions of this same court, this testimony of these same women is cited in support of the fact of marriage. The court further says: "des Granges was a man somewhat advanced in life, he kept an humble shop for selling liqueurs and confectionery. This seems to have been his sole business. His wife Zulime was about twenty-two years old, and uncommonly handsome. He seems to have been a lone man in New Orleans, and his only friends were his wife and her relations. It is palpable that these two sisters, Despau and Caillavet, swear to a plausible tale of fiction, as to des Granges' bigamy, leaving out the circumstances of gross reality. These originated beyond question in profligacy of a highly dangerous and criminal character, that of a wife having committed adultery and been delivered of an illegitimate child in the absence of her husband, who had gone abroad on her business and at her request, together with that of Mr. Clark. This child Caroline, was concealed in another State, where the mother went and was delivered, and then she returned home to New Orleans, presented herself to society as an innocent and injured woman, and public indignation was skillfully turned on her husband for a supposed crime committed against her. This is the reality these sisters of hers conceal, swearing roundly that she knew this child to be des Granges'. The result of these reports spread about was intended to harass and finally drive des Granges from the country, so that his

wife Zulime might indulge herself in the society of Clark unincumbered and unannoyed by the presence of an humble and deserted husband. This was in fact accomplished, des Granges did leave the country soon after he was tried for bigamy and acquitted, and Clark did set up des Granges' wife in a handsome establishment where their intercourse was unrestrained."

But one of these sisters, Madam Despau, says that des Granges acknowledged to her he had a living wife when he married Zulime. The court goes on to say: "The great basis of human society throughout the civilized word is founded on marriages and legitimate offspring, and to hold that either of the parties could by a mere declaration establish the fact that a marriage was void, would be an alarming doctrine indeed."

The court, in conclusion, criticizes the Patterson suit in 6 Howard, and declares it to be an amicable controversy only. The costs of it were paid by Mrs. Gaines, although she won the suit, as were the fees for Patterson's counsel, and they say "that no earnest litigation was had, is too manifest for controversy. Patterson was to lose nothing even though he lost his suit." And finally the court sums up that Madam Despau and Madam Caillavet are not worthy of credit.

The decree in Chas. Patterson's case in 6 Howard does not affect these defendants, says the court, because, first, they were not parties, and secondly, it was no earnest controversy, and the bill was ordered dismissed. We have gone at some length into the discussion of this case, because the next time it appears before the Supreme Court we find a complete change of front, how brought about, will be shown later.

In a dissenting opinion of fifty-eight pages, Mr. Justice Wayne presents the case as strongly as he did when organ of the court in the Patterson case in 6 Howard, and concludes by saying: "Those of us who have borne our part in the case will pass away. The case will live. Years hence, as well as now, the profession will look to it for what has been ruled upon its merits, and also for the kind of testimony

upon which the merits were decided. The majority of my brothers who give judgment, stand, as they may well do, upon their responsibility. I have placed myself alongside of them humbly submitting to have any error into which I may have fallen corrected by our contemporaries, and by our professional posterity."

This decision would have been a serious blow, if not an end to litigation with many; not so with Myra Clark Gaines. Temporarily checked in the Federal Courts, she turns for relief to the State Court and files proceedings in the Probate Court in New Orleans. In January, 1855, she filed a petition asking to have Daniel Clark's will of 1813, which had been lost or destroyed, probated. In March following, judgment was rendered against the will and denying probate. But in December, 1855, a decision was rendered by the Supreme Court of Louisiana on appeal, establishing the will in the form contended for by Mrs. Gaines, and a decree was entered to that effect on February 25, 1856. This was more than forty-two years after the death of Clark, and the will was proved only upon the dim recollection of very old persons who swore they had seen it or had heard Clark talk of it, and one said he had opened it, read it, and recognized Clark's handwriting. In Louisiana, a will may be written, dated and signed by the testator, without any witnesses. The decree of probate was of limited effect—it bound none but those who were parties to the suit, owing to the peculiar character of the proceedings. The decree probated the will but did not establish Myra's status as legitimate child of Clark. This will thus probated declared, so witnesses said, that Myra Clark Gaines was Daniel Clark's legitimate and only daughter, and universal legatee, but she was not so recognized by the decree itself. This decree gave her a standing in the courts of the United States, of which she was quick to avail herself, and immediately new litigation was started against the parties in possession of the property of Daniel Clark, which had been sold by Relf and Chew, his executors under the will of 1811. There were three separate bills, having many defendants. The bills

in all these cases were dismissed by the Circuit Court of the United States. All went to the Supreme Court on appeal, and the last case, that of Gaines v. Lizardi, and fourteen others, is reported in 24 Howard, under the name of Gaines v. Hennen, to which we will give some consideration. The decision in this case was rendered at the December term, 1860.

Mr. Justice Wayne, as organ of the court, said: "This is the sixth time this case has come before this court on appeal. Since the case of Mrs. Gaines was last before this court, as reported in 12 Howard, the olographic will made by Daniel Clark in 1813, was ordered by the Supreme Court of the State of Louisiana to be admitted to probate, notwithstanding its loss. This will declared Mrs. Gaines to be his legitimate and only daughter, and universal legatee.

"Her title to the lands in controversy is not barred by the statute of limitations, nor did the decision in 12 Howard overrule that in 6 Howard. The evidence that des Granges was guilty of bigamy is sufficient to establish this fact. Whether Zulime married Clark in good faith does not matter; the weight of the testimony is that Clark did so, and therefore under the laws of Louisiana the offspring of that marriage, even though the marriage itself were void, is legitimate, and can inherit. The law being that if either parent contract marriage in good faith, the issue of it will be legitimate, and this, regardless of the fact that the parties were not legally competent to marry, and the marriage itself is null."

"This brings us to the chief objection which was made in the argument, and most relied on to defeat the recovery of this complainant. It is that her status of adulterine illegitimacy incapacitates her from taking as legatee under the olographic will of her father, though admitted to probate, as it has been, by the Supreme Court of Louisiana."

"The probate of the will, by virtue of the decree in the Supreme Court of Louisiana, it is true, did not actually give Mrs. Gaines any status of legal heir, but the legal effect of her father's testamentary declaration is well recognized as

a presumption of the strongest character. The testamentary recognition of a child as legitimate is of the highest legal authority."

"Not only that, but this averment of her status as one of adulterine bastardy in the answer to complainant's bill is not in response to any allegation in it. It changes the attitude of the litigants from what it was in Gaines v. Relf and Chew, in 12 Howard. Then Mrs. Gaines had the burden of proof to establish affirmatively the fact she was the forced heir of her father. This court at that time did not think that had been satisfactorily done, and dismissed her suit without affirming for or against the *factum* of marriage between her father and mother, nor could this have been done without expressly overruling our decision in 6 Howard. This is the situation when Mrs. Gaines comes once more before us with a testamentary declaration of legitimacy in her favor. Now we remark that the burden of proof is on the defendants to show that she is not the legitimate child of Daniel Clark, and this they have failed to do."

"Now, as we have said, the legal relations of adulterous bastardy do not arise in this case, for independently of the declaration of the will that the complainant is the legitimate child of Daniel Clark, this court having decided in 6 Howard that the marriage of Clark to Zulime was valid, by reason of the invalidity of her previous marriage with des Granges, that of course makes the complainant legitimate; but if it is assumed that by the decision in 12 Howard the marriage of Clark to Zulime was invalid on account of the validity of the marriage with des Granges, then still Myra is legitimate by the law as the offspring of a putative marriage." I would inject here, that by the civil law, in order that there may be a putative marriage, one of the parents at least, must have acted in good faith, a rather violent assumption in this case, in my opinion.

To this decision there is a most vigorous dissenting opinion by Mr. Justice Catron, with whom we find Mr. Chief Justice Taney and Mr. Justice Grier.

It is undoubtedly a fact that the issue in the suit in 12 Howard, was whether complainant's mother was, before and at the time of Myra's birth, the lawful wife of Jerome des Granges. The court so found and based its decree dismissing the bill on that fact. The fact being established carried with it all the legal consequences which result from the fact. One of these consequences was that Mrs. Gaines was an adulterous bastard according to the laws of Louisiana, and hence incapable of taking by the will of her father.

As a conclusion of my own, it seems to me that the doctrine of estoppel relied on by the defendants in this case, was well taken. The rule is that the same subject-matter cannot be litigated twice between the same parties on evidence brought forward or *left out* of the first case. In this last suit the will of 1813 is for the first time introduced and relied on, but it could have been introduced in the former in 12 Howard between the same parties. The difficulty was that it had not been proved and recorded in the Probate Court; but it might have been proved just as well forty years before the time it was admitted of record, as when it was.

If a title deed could not be read on the hearing of a case for want of being recorded, the complainant might fail to recover. This is of constant occurrence; still the judgment or decree would be as conclusive as if the deed had been authenticated and recorded. It was simply a neglect of the complainant to produce her proof in legal form, a matter with which the defendants had no concern. Holding back an existing will and making an experiment on the issue of heirship requiring the same proof, and then in case of failure to bring a second suit on the established will, is a mere contrivance and an evasion of the due administration of justice which should not be allowed. Mrs Gaines first sued as heir and did not mention the will of 1813, although she was entirely cognizant of it. Failing in this she sets up the will, and on the will of 1813, the present suit is founded against the same parties. Conceding this to be true, it follows as a consequence that the complainant took as heir, not as devisee,

because in the will Clark declares her to be his only legitimate and lawful heir, and therefore the court was called on to try the precise issue of heir or no heir, which was tried in the former suit in 12 Howard, and decided adversely to Mrs. Gaines.

The decision in 12 Howard being thus overthrown by this last decision, ruin was the consequence to many who confided in its soundness, and purchased, as was shown, upon the faith of that decision. The bill in this case was filed more than thirty years after Mrs. Gaines became of age and thirty-six years after the first vendor purchased and took title in 1820, and it must be presumed that the proper orders of the Probate Court in reference to sales were granted. After such lapse of time, length of possession supplies the place of testimony, presumption is substituted for belief, and yet the decree in this case was adverse to such innocent purchasers of the property in controversy.

We cannot refrain from quoting the brief remarks of Mr. Justice Grier, who joined in the dissenting opinion: "I wholly dissent," he says, "from the majority of the court in this case, both as to the law and the facts, but I do not think it necessary to vindicate my opinion by again presenting to the public view, as I have once heretofore done, a history of the scandalous gossip which has been buried under the dust of half a century, and which a proper feeling of delicacy should have suffered to remain so. I therefore dismiss the case, as I hope, for the last time, with the single remark, that if it be the law of Louisiana that a will can be established by the dim recollections, imaginations or inventions of anile gossips, after forty-five years, to disturb the titles and possessions of *bona-fide* purchasers without notice of an apparently indefeasible legal title, '*haud equidem invideo miror magis.*'" This decision was rendered in 1860, and, notwithstanding the hope of the learned judge that he had heard the case for the last time, this case appeared and reappeared before the Supreme Court of the United States again and again, on six different occasions, until every judge then presiding on the bench was dead.

In the meanwhile, during the pendency of this suit in Washington, Fuentes and seventy-five other purchasers from the executors of Daniel Clark under his first will, filed a suit against Myra Clark Gaines in the Probate Court in New Orleans, in which they alleged that if Daniel Clark made a will subsequent to the one of 1811, he himself suppressed it. That he never acknowledged Myra as his legitimate child, that he made ample provision for her as his illegitimate child by secret trusts which were duly executed by those confided with the property intended; that he could not and did not make a will in favor of Myra on account of her status, as the laws of Louisiana forbade it. They alleged that the probate of the will of 1813 was a gross fraud on their rights, and that Mrs. Gaines has set up in the United States Court the decision of the Supreme Court of Louisiana showing she is an heir, which they cannot fight in that court, and they pray that the will of 1813 be revoked and the probate recalled and annulled.

Mrs. Gaines endeavored to remove this case to the Federal Court, but it was refused, the will was revoked and she appealed. The Supreme Court of the State held that the case could not be removed, because the Federal Court had no jurisdiction over probate matters, and hence could not pass upon a petition to revoke a will, nor was it intended, says the court, "to extend the jurisdiction of the United States Courts on causes brought before them on removal beyond the limits prescribed by their original jurisdiction." The Supreme Court says, through Mr. Chief Justice Ludeling, as organ: "Forty years after the death of Clark—long after all his contemporaries have passed away—Myra introduced as witnesses several women, her aunts and two or three octogenarians, upon whose testimony a will has been established, which forty years before had been lost or destroyed, and upon such testimony, is this will proved and put on record."

The Chief Justice, in reversing their former ruling and annulling the probate of the will of 1813, heretofore ordered to probate, uses the language which Mr. Justice Grier used

in 24 Howard in saying "the laws of Louisiana do not allow a lost will to be established by the dim recollections, imaginations or inventions of anile gossips." Thus by the highest tribunal in Louisiana Myra was deprived of the support of the now famous will of 1813, fixing her status of legitimacy by testamentary declaration. This decree was rendered in 1871, but it came too late and proved of no injury to Mrs. Gaines.

While this State litigation was in progress, and before the Supreme Court of Louisiana had revoked the probate of the will of 1813, Mrs. Gaines had a case against the city of New Orleans for the recovery of two hundred and forty arpents of land (an arpent is little more than an acre) purchased by it from the executors under the first will. It had been filed in 1856, but took years to get the case ready for trial owing to the immense mass of testimony, covering over eight thousand printed pages. The case was lost by her in the lower court. It may not be amiss to say, in this connection, that Mrs. Gaines, with reference to her heirship and legitimacy, never won a single case in the lower court, either State or Federal, and was always the appellant. The case in the Supreme Court of the United States is found in 6 Wallace, p. 642, and, as usual, covers over one hundred pages of that volume.

Mr. Justice Davis, the organ of that court, says in opening: "It was supposed, after the decision of Gaines v. Hennen, in 24 Howard, that the litigation pursued in one form or another for over forty years by the complainant to vindicate her rights in the estate of her father was ended. But this reasonable expectation has not been realized, for other cases involving the same issues and pleadings and supported by the same evidence are before us. The legal principles on which the Hennen case was decided are no longer open for consideration." "We shall not attempt to give a full history of the litigation. It is enough to say that it has been pursued by the complainant through more than a third of a century with a vigor and energy hardly ever surpassed, in defiance of obstacles which would have deterred persons of

ordinary mind and character, and has enlisted on both sides, at different periods, the ablest talent of the American bar."

The fact that the will had been admitted to probate in Louisiana seems ever to have had the greatest influence upon the Supreme Court of the United States. In this case again the court repeats, "that the probate of a will duly received for probate by a State court of competent jurisdiction is conclusive of the validity and contents of the will in this court." They also decided that the will of 1811 was therefore annulled, and all the sales made thereunder were invalid and void, and the purchasers took in bad faith. A most unjust decision, though said most humbly. "You may seek the records of courts throughout the civilized world," says Mr. Justice Davis, "and you may not find one where justice has had to deal with a case of greater hardship, or more interesting character and history, than the one we are now considering. Daniel Clark died in 1813, leaving his vast estate to his only child, an infant of tender years, who has never enjoyed it, and now, after a lapse of fifty-five years, is still struggling to obtain her own. Courageously has she groped her way in darkness, and now with every obstacle in her path surmounted, she is in her old age within sight of her long lost patrimony." Justices Swayne, Grier and Miller dissented.

Following upon the heels of this case is that of Gaines v. de la Croix, in 6 Wallace, p. 719, where the same views were expressed. These decisions were rendered in 1867.

Flushed with well-earned victory, Mrs. Gaines returns to Louisiana only to be met by the decision of the Supreme Court of that State heretofore mentioned, annulling the will of 1813, on which so much depended. This shattered her well-founded hopes that litigation was at an end. Once more she had her status as the legitimate heir to fight for, with no sustaining opinion in the shape of *prima facie* evidence of that fact in her favor. Her father's will of 1813, on which she so successfully had relied in the United States Court had been revoked. How few could have borne up under that blow!

She had attempted to remove that case to the Federal Court, but it had been refused; the State Supreme Court affirmed that ruling. She sued out a writ of error to the State Supreme Court and carried the case once more to Washington, where it appears in 92 U. S., p. 10, Gaines v. Fuentes, *et al.* The United States Supreme Court reversed the decree of the Supreme Court of Louisiana in a very elaborate opinion, on April 30, 1877, and rendered a decree to the effect that the will of Daniel Clark, made in 1813, was duly probated by the Louisiana Court in 1855, and upon sufficient legal and truthful testimony. The court also held that the case could have been removed, although the Federal Court could not have taken original cognizance of it. Mr. Justice Bradley, Swayne, and Chief Justice Waite dissented.

The succeeding trials can but be mentioned in this article. In Smith v. Gaines, 93 U. S., 341, the case went up against a surety on a *supersedeas* bond for $125,266, and was won by Mrs. Gaines.

Davis v. Gaines, 104 U. S. 386, involved certain legal questions in connection with property held by purchasers where the purchase price went to pay off incumbrances and was decided adversely to Mrs. Gaines.

In Gaines v. Miller, 111 U. S. 395, Mrs. Gaines tried to collect a judgment which had been obtained sixty years before by Relf and Chew as executors. The court ruled adversely to Mrs. Gaines on the ground of the statute of limitations having run against her.

In New Orleans v. Gaines, 131 U. S. 191, as the question of bad faith on the part of the city of New Orleans as a purchaser of property from Relf and Chew, executors of Daniel Clark, was involved, the whole case was gone over again anew at great length. The relations existing at the time between counsel for Mrs. Gaines and myself caused me to have more or less to do with this controversy. It involved about a million and a half dollars, principal and interest, and with a decision in Mrs. Gaines' favor the city appealed. The record, when sent to Washington, filled two large trunks and covered about forty thousand pages of written matter.

What the printed record was is not recalled, but it was contained in eight large printed volumes. The costs of court in this case below were $34,000. Upon a hearing in the Supreme Court, a large portion of the sum found against the city in the lower court was cut off by this appeal, and the case was sent back with the right granted to the city to ascertain whether Mrs. Gaines had not compromised with certain property-holders during the litigation, who had nevertheless called the city in warranty.

This case again came before the Supreme Court, and is to be found in 138 U. S. 595, where the whole question of rents, fruits, revenues, and profits of land bought in legal bad faith was again discussed, and the city of New Orleans was made to pay an enormous sum as rents and revenues upon property bought in actual good faith from executors duly qualified, who had sold under orders of a court of competent jurisdiction, and where possession of the land had been held by innocent purchasers for over forty years. Thus ended the Gaines litigation in the Federal Courts, begun in 1836, and terminated in 1891, pursued steadily, eagerly, persistently, and all the time, with no break in it from the beginning to the end. Mrs. Gaines died, about eighty years of age, without having seen the promised land, without having reaped the fruits of her victory in its entirety, and she bequeathed to her grandchildren, having outlived her own children, this same litigation which came as an inheritance to her in 1813.

Upon a review of this case, removed by time from the scene of action and undisturbed by any of the influences which gossip says were most strongly brought to bear in the case upon some of those who had to decide it, prejudiced, if anything, in favor of Mrs. Gaines, by virtue of association and partnership with one of her lawyers who fought her battles in some of its later phases, still I am strongly of the opinion which has been made manifest in this article, that Zulime Carriere never married Daniel Clark, and that her husband, des Granges, was not a bigamist. This, of course, fixes Mrs. Gaines' status, and as the offspring of Clark she could not inherit from him.

I recall Mrs. Gaines three or four years before her death, when she haunted the offices of her lawyers and kept them ever keyed up to the proper pitch by her presence, her enthusiasm, and her confidence, which never wavered. She was under five feet in height, thin, wiry, with small, bright, restless black eyes, very red hair, streaked with white, worn in bunches of little curls on either side of the forehead. She was always dressed in black with black mits upon her hands, carrying with her a large black bag in which were papers connected with her many suits. Energetic in her movements, exceedingly well posted upon her cases, with a masculine mind, enormous power of perseverance and resistance where obstacles presented themselves, she was a woman remarkable indeed. She spent her own estate, which was considerable, that of her two husbands, and had borrowed money on her judgments to carry on the litigation, so that at the final termination of her cases she had but a slice left of what would have proved a vast estate. From first to last, certainly thirty lawyers, if not more, had been in her service in the State and Federal courts, seventeen of whom died during employment. Among some of the most prominent lawyers engaged at one time or another in this controversy, I will mention a few names, such as Key, Reverdy Johnson, Caleb Cushing, Brent, Daniel Webster, Jeremiah Black, Jno. A. Campbell and Thos. J. Semmes. The costs of her various suits, though hard to estimate, certainly exceeded two hundred and fifty thousand dollars, while she actually paid her lawyers in fees, over six hundred thousand dollars, out of a million and a half, the amount finally paid her by the city of New Orleans. The specter litigation ever pursued her, and appeared anew after her death in a very remarkable way.

She executed her last will and testament on the Monday before she died, with great difficulty, owing to the weakness of approaching dissolution, the signature not being recognizable. On the Thursday following she died. She was never alone for one moment between those periods of time, and every minute was accounted for, and yet after her death

there was offered for probate a will written, dated and signed, without witnesses, posterior by two days to the will executed before a notary by her on Monday. The handwriting was an exact and perfect imitation of the small neat characters for which, in health, Mrs. Gaines had been noted. A woman named Maria Evans offered this will for probate, by which she was, as a dear friend of Mrs. Gaines, left several hundred thousand dollars. It of course caused much litigation, both in the State of Louisiana and in New York, where it was also offered for probate, Mrs. Gaines being a citizen of New York. It was shown to be a forgery after a most protracted fight, in which experts contradicted each other flatly, and the woman was indicted for forgery and perjury, and fled the country. Are not the words of Mr. Justice Wayne true which were read in the beginning of this article, and is not this a wonderful and romantic chapter in the litigation of this country?

Besides the cases cited in the foregoing article, it may be of some interest to know that the following cases were also litigated by Mrs. Gaines:

Gaines v. Hammond, 6 Fed. Rep. 449.
Barnes v. Gaines, 5 Rob. (La.) 314.
Succession of Clark, 11 La. Ann. 124.
Clark v. Gaines, 13 La. Ann. 138.
De la Croix v. Gaines, 13 La. Ann. 235.
Fuentes v. Gaines, 25 La. 85.
Foulhouze v. Gaines, 26 La. Ann. 84.
White v. Gaines, 29 La. Ann. 69.
Fuentes v. Gaines, 1 Woods (C. C.), 112.
Gaines v. N. O., 4 Woods, 213.
U. S. *ex rel.* Gaines v. New Orleans, 17 Fed. Rep. 483.
Gaines v. N. O., 27 Fed. Rep. 411.
Gaines v. Masseaux, 1 Woods, 118.
Gaines v. Molen, 30 Fed. Rep. 27.

APPENDIX O.

THE PASSING OF INDIVIDUAL RIGHTS OF PROPERTY.

ANNUAL ADDRESS BY W. A. BLOUNT, OF PENSACOLA, FLORIDA.

(Stenographically reported by Edward Crusselle.)

Mr. President, Ladies, and Gentlemen, of the Georgia Bar Association: With that nicety of courtesy which distinguishes the ideal host, the Chairman of your Executive Committee, upon yesterday, in making announcement of the program for to-day, said that my address was to be an informal one. He illustrated not only the courtesy of the host, but also the holding fair and strong to the obligation of a compact, because, when I was invited to address this Association, the demands and pressure upon my time were so great that all that I could promise was to make an informal address. There are very great advantages, however, in doing so,—advantages which are not embraced or involved in an exhaustive and studied formal discourse.

One of the advantages is that, after hearing your honored President yesterday, I am able to adapt myself to what I conceive to be his views, and the views of the majority of the Georgia Bar Association. I was told then that he, and you gentlemen, perhaps, believe that "brevity is the soul of wit," and that if I "have a gun to shoot, whether a blunderbuss or not, I should get it ready quick and shoot it." I was also told that there was no necessity for a climax, and that stationery should be eschewed. All of these things seem to fit exactly the situation, so far as it is applicable to me, for I have come before you, not for the purpose of presenting to you a learned written address, nor to make an exhaustive presentation of any particular subject, but

simply, absolutely to be informal, and to make an informal presentation of a subject, which has its importance, although it may be entirely familiar to most of you as lawyers. The flexibility of an informal address is peculiarly fitted to what I have to say. The exhaustive address is one which is a bane to the speaker and a bore to the audience. The man who has a "fortiethly," is always a bore to those who have to listen to him. I have no fortiethly, but in a plain, simple, compact way, so far as I can, I am going to present to you a few facts which have occurred to me lately, respecting what I believe to be an important phase of American judicial decision, especially as made by the Supreme Court of the United States. The theme which I have chosen is, "The passing of individual rights of property," or, possibly, it would be a little more accurate if I should say, "The subjection of individual rights of property to the public good, as indicated and illustrated by the decisions of the Federal Courts, and particularly of the Supreme Court of the United States."

If I were making an exhaustive address, I should go back and inquire into the fundamentals of private property. I might say that it is recognized in the Tenth Commandment; that it was violated by the seizure of the Sabine women; and that it was part of the transaction between Esau and Jacob, but I assume that all lawyers and all men know what private rights of property are. We have believed for all time that private property was being respected, and would forever be respected. When I speak of private property, I do not mean simply the guardianship of the property, nor simply the physical property, which we can see and handle, but I mean the right to use the property, the franchise, the privilege, the fruition, that comes from the use of property, and in my view it is that right to use, which is gradually being whittled away by the Supreme Court of the United States by decisions, which have been rendered ever since 1876, down to the present time, and, while I am no pessimistic reminder of evils, I am going to ask your sober and careful attention for a few moments (and only a few moments, because that comes within the scope of an informal

address) to a few of those decisions which I think are gradually drifting away from the right of the individual, and submerging that right in the right of the public.

Prior to the Civil War, these questions did not arise very frequently for the reason that the individual was paramount. There were cases where the public came in conflict with the individual, and the law recognized that the public, through the Legislatures in this country, and through Parliament and other legislative bodies in other countries, had the right to regulate the rights of those people who had subjected themselves to the demands of the public; but during the Civil War, there arose a condition of affairs which brought the public and the individual into sharp antagonism and keen conflict. That was a time when immense volumes of money were issued and in circulation, when immense enterprises took place, when the necessity of mobilizing an army, equipping it, drilling it, and putting it into the field made men acquainted with large ideas, and, when the war was over, those ideas still continued, not in the carrying out of governmental functions, but in the increase of large enterprises, public utilities greatly increased, and those public utilities necessarily required the waiver of certain rights of the individual. Whenever there is, for example, an increase of freight on a railroad, there is a corresponding increase, necessarily, in the number of people who are interested in the transportation of that freight. When there is an increase of passengers, the number of people touched by the railroad becomes necessarily increased, and with the increase of the individuals affected, there necessarily becomes an increase of antagonistic points, an increase of the opportunity for conflict and litigation. That opportunity began where it naturally would begin,—the opportunity for discussion and decision of questions relating to the rights of public carriers. The opportunity was quickly at hand, and we have in 1876 the first decisions that in my opinion marked a decadence in this country of private right, and the subjection of that private right to the will—not always the interest, but the will,—of the public.

The first group of cases was decided by the Supreme Court of the United States in 1876, and are cases known to every lawyer, perhaps not in detail, nor perhaps accurately, but still known and are cited as the "Granger Cases." The chief of those cases selected by the Supreme Court for the expression of its opinion was "Munn *vs.* Illinois." In that case the question arose as to the right of a Legislature to regulate the rates of grain elevators. Grouped with it were several other cases, where questions arose as to the regulation of railroad rates, and the Court made the case of Munn *vs.* Illinois a vehicle for the expression of its opinion. It there announced, seemingly almost unqualifiedly, the doctrine that the right of any corporation, or the right of any individual to earn an income from the use of property which had been subjected to a public use, was absolutely at the will of the Legislature. It was an astonishing doctrine, one that had no foundation in anything that had preceded in the sharp conflict that was reflected in the Granger movement itself. The Court in the case of Bronson *vs.* Kinzie, in 1st Howard, speaking by Chief Justice Taney, had said that the right of private property embraced not only the corporeal thing itself, but the right to use it; that it was not an abstraction but a reality, and in the case in 13th Wallace of Pumpelly *vs.* Green Bay, the Court again said that the right of property involved the right to use it—the fruition of it, and you could no more take away the right to use property than you could take away the corporeal thing, and yet the Supreme Court, as I have said, in the Granger cases, without apparent qualification, announced the doctrine that when any person had submitted his services to the public, and thereby became a public servant, the property, which was necessary to the performance of that service, became subjected to the will of the public, and, if there was a remedy, it was not a remedy of the courts; but that the remedy was with the voters themselves. In other words, that what the Legislature undertook to say was the law, was final, and the only remedy was to go back to the electors themselves, and have the electors determine if the will of the Legislature was or was not their will.

It was a doctrine that, as I said, astonished the legal world, and yet, singular to say, it was a doctrine that remained intact for years thereafter. Even so able a judge as Judge Woods, afterwards upon the bench of the Supreme Court of the United States, in the case of Tilley *vs.* Savannah, Florida & Western Railroad Company 5th Fed. Rep. (a case arising in this Circuit) announced the same doctrine exactly, and applied it, and said that the rates of a railroad company were not to be judged of by the necessities of the railroad company, and its right to earn a percentage on its investment, but was subject to the will of the Legislature, and one must go back to the voters, because that influences the Legislatures; otherwise the legislative will was final. It is true (and it is necessary in exact fairness that I should state this, too) that there was another element in that case, because the Constitution of the State of Georgia allowed the revocation or amendment of a charter, but Judge Woods did not place his decision on that ground alone, but enunciated the broad doctrine that had been announced by the Supreme Court of the United States and followed it. Evidently that doctrine could not continue; it was too repugnant to the doctrine of private right, and we find the Court gradually receding from it. In the case of Stone *vs.* The F. L. & T. Company, 116 United States, there is a declaration that the former declaration in Munn vs. Illinois must be taken with a qualification,—that qualification being that there shall be a right in the public servant to earn some compensation. We find again in the Needles case, in the 113th U. S., the announcement of that same doctrine, but the doctrine enunciated in the Granger cases stood practically intact for nearly thirteen years, until Mr. Justice Brewer in the Dey case, 35 Federal Reporter, announced that there was a right in a railroad company to earn some compensation, but even he declined to say that it should be anything over and above the expenses of operation, or that it should be more than a fraction of one per cent upon the cost of the reproduction of the property involved, but he finally did say that if the facts existed showing that there was an entire

deprivation of any income whatsoever, then he would take cognizance of it, and would enjoin the Railroad Commission of the State of Iowa from enforcing rates that would produce such a result.

I am glad to say that the Supreme Court of the State of Florida was, in Pensacola & Atlantic R. R. Company, 25 Fla., the pioneer of all the State Courts in holding that there are rights in public servants to earn at least the expenses of operation, but even that Court would not commit itself as to whether the Constitution preserved a right to earn even a fraction of one per cent net income. It would not say that railroads should be upon the same basis as all other persons before the law, and should be allowed to earn something at any rate that should be tantamount to that earned by other persons possessing property.

Fortunately, however, there has been a retrogression and a rebound, and not long after in decisions of the Supreme Court of the United States (and in fact again and again since the Stone case, and running down to the latest one) there was an announcement by the Court that the rights of railroads and other public servants to earn a living interest are not to be infringed upon by the Legislatures, and that the Courts will see that those rights are protected, but even to this day there is scarcely anything more than an abstract announcement of that principle, and the Court after more than thirty years has refrained from laying down a definite tangible rule of decision, by which the lower Courts and the Courts of the several States can act.

But even with that rebound, even with that concession to the rights of the individual, there is a qualification, a line of thought running throughout all those decisions that marks the danger. It is said in almost all of them that the rights of a corporation, or an individual, who has subjected himself to a public service, to earn something upon his investment, must be taken subject to the qualification that the public has an interest, which may perhaps destroy that right. Gentlemen of the Bar Association, who have been accustomed to regarding private property as absolutely

unassailable, can ascertain the danger. We can admit at once that the public has a right to be served at a reasonable rate, but, when we say that an individual, whether corporate or personal, must have his right to earn subject to the will and necessities of the public, it means that when there comes a conflict, the public must prevail, and the private right of fruition from the private right of ownership of property must cease and determine. In other words, if in the State of Georgia the rate of interest be upon large investments of capital three per cent or four per cent, and the public demands that carriers should carry either persons or freight at a rate which would yield one-half of one per cent, and the public, through the Legislature, believes that that is the rate which the public ought to have, then according to the intimations of the Supreme Court of the United States (not the decisions, but the intimations), the public right being supreme, there must necessarily be a cessation of the private right, or a lessening of it *pro tanto* by the necessity of the public.

There is another dangerous element also, and that is the doctrine announced in some of the inferior Federal Courts of late that there should be, in case of conflict between legislative transportation rates and the rates fixed by the public carriers, a test by time and actual experiment of the reasonableness of those rates. I am free to say that if it be a matter of practice, a question for determination for the satisfaction of the Court, which otherwise is in doubt, then the Court has a right to put it to test, as it does any everyday matters, when injunctions are applied for, but, when the Court goes further, as some of the Courts have gone lately, and says that it is not because they desire a test, nor because they are uninformed, but because the legislative will has said that a certain rate is reasonable, and that that must be presumed to be a correct rate, and that the burden lies upon the public servant to establish that it is not a correct rate, I must say, speaking for myself, that the Courts give a great deal more weight to the wisdom, intelligence, and qualifications of legislators than my own experience as a legislator,

and as a lawyer, has led me to believe ought to be attributed to them. Without investigation, without means of investigation, without data, the Legislature fixes an arbitrary rate, and the Courts say that they must presume that that was fixed after investigation, upon sufficient data, and satisfactory reasons, and upon that conclusion they say there must be a test made of the reasonableness of that rate. Is it not quite evident that, if you have no right to take away the income of a corporation or individual finally, you have no right to take it away for a short time, unless it becomes necessary for the administration of justice that it should be taken away? Have you any more right, to make it concrete and simple, to take away a dollar from a man, than a hundred dollars? And yet, when you have said that it must be taken away from him by reason of the declaration of the legislative body, and without investigation of the correctness or reasonableness of that declaration, you have thus subtracted simply that much from the profit, and therefore from the property of the individual or public servant, and appropriated that much to the public, taking it from the estate of the individual.

This being an informal address, and being under the admonition that it shall be brief, I shall not follow that line of thought, but I shall ask your attention for a moment to another group of cases, cases that seem to me to be sliding further down the line, and bringing us finally to those cases which we shall examine as going to the extreme limit of taking private property for at least a supposed public use. The railroad cases may have been rightly decided. It is not my province to criticize, except so far as my individual judgment is concerned, the decisions of so august a body as the Supreme Court of the United States. They may have been correct, because the Court has been here dealing with people and with interests that had submitted themselves voluntarily to the public service, and the Court may have correctly construed the relations between those public servants and the people whom they served. The idea of the public right, however, in predominance over the individual,

has gone further, and has really led to this doctrine—that wherever there is a large number of individuals, whose interests will be subserved by the taking of the property of one individual or a few individuals, then somewhere within the realm of the police power, or somewhere in the infallibility of the Legislature, there will be found a right to take from the one and give to the many. The divergence between the first class of cases, and this class, is this: in the public service cases every man had the right to call upon the public servant to serve him; there was relation between him and the general public. In the cases which I shall now call your attention to, that relation did not exist, and the Court had to find a new principle upon which to make its decisions.

Those decisions are what are known as the Insurance Fee Cases. The first time the doctrine was broached by the Federal Court—so far as I know, was in the case of the Merchants' Life Association *vs.* Yoakum (98th Fed Rep.), when the Circuit Court of Appeals decided to be constitutional a statute providing that a litigant, suing an Insurance Company should be entitled in all cases, when he succeeded, to recover not only attorney's fees, but also damages from the Insurance Company, because it had the temerity to fight and litigate a cause which it deemed to be just. I suppose that many of you have read those cases. I suppose you have examined the ground upon which that particular case proceeded. It was on the idea that the Insurance Company made contracts, that were complicated, intended perhaps to produce litigation, and, therefore, no matter how honest in the particular case the company might be, no matter how well founded in the opinion of its lawyer the defense might be, yet, because it cared to litigate and because it cared to go before the Court to test its rights, then it must, if perchance the Court and jury differed from the attorneys, pay the penalty of performing the same act that every other citizen in the United States had the right to perform, the act of litigating upon the advice of counsel such things as that counsel thought to be a proper subject for litigation. In the case of Insurance Company *vs.* Mettler in 185 U. S.,

the Court took the position that there are very many people interested, and not only so, but it was of vital interest to the people who insured in life insurance companies that the amount claimed under a policy should be paid promptly. It had previously decided the case of Ellis *vs.* The Gulf, Colorado & Santa Fe Railroad, with which every lawyer is familiar, and it had said distinctly in that case that there was merely a debt to be collected, and there could not be a penalty imposed upon the defendant for contesting a debt in one class of cases, which was not imposed upon the defendant in every other class of cases, but in the Mettler case, it forgot that there was an equal number of persons interested in the enforcement of claims against railroads (such as were involved in the Gulf, Colorado & Santa Fe case) as there were in insurance matters. But evidently the widow was before the mind of the Court; evidently the orphan bore down upon the sympathy of the Court; and evidently the Court was carving out from the general public a portion of the people of the United States, and called that portion the public, and only upon that ground could there be any logical (if that can be called logical) sustentation of these decisions. A man who sues a railroad company, as an employee, and has nothing whatsoever to live upon except that which he receives in wages, is not entitled to recover attorney's fees, and yet the man who contracts with an insurance company, entering into it voluntarily, demanding relief from the company, not by virtue of his public relations, but by virtue of the contract that he has made, has the right to sue to get damages and to recover attorney's fees. It would be far from me to say that it was illogical, but it is for you and the other intelligent men who embrace the profession of the law in this country, to say whether the two cases stand together, and whether they do not evince an unusual progression in the minds of the Court towards the confounding of the general public with a portion of that public. The public universally has the right to and does demand the services of the public servant, but the Court substitutes for the public a lesser number, simply indicat-

ing that there are very many people who make insurance contracts, that those people are usually indigent, and that therefore, by reason of the indigence, they should be segregated from the general mass of the community, and should be allowed this peculiar privilege.

The tendency of the Court in the matter of circumscribing the limits of the so-called public, is indicated by a subsequent decision in a more recent case, in which a statute had provided that the owners of real estate insured and damaged by fire should have the right to recover attorney's fees, but did not include the owners of personal property. The Supreme Court of the United States sustained the statute, and in sustaining it used these two arguments,—one that since the beginning of time there had been distinctions between real estate and personal property (it did not say and could not say that there had been distinctions in the right of property between one and the other, and it did not say that the distinctions, to which it referred, were simply distinctions in the tenure, or in the form of conveyance, etc.); but they said further (and that is more germane to what I am now attempting to say) that real estate was frequently the homes of the *many*, and this *many* carved out in that way again constitutes the public. It is gradually narrowed down from public servants, through contractual servants, the insurance companies, down to the people, who are entitled to protection and discrimination merely because their homes are involved. It seems to be an *ad captandum* declaration lacking logic, and arising from a desire to lessen the scope of the word "public," in order that the will of the Legislatures of the several States may prevail.

But let us pass and come to a little more recent times. We had supposed (and I am not going into any learned discussion as to whether we had supposed it under the equal protection clause of the Constitution, or under due process, or under the right to just compensation), but we had supposed that a man's private property was always safe from appropriation by anybody else, the State, or a corporation, or individual, unless necessary for public use,

and we had supposed that that public use meant the public, that had the right to demand that use, and that it was entirely beyond the power of Legislature to say that other than the *public* could take your property or mine, no matter how much he agreed to pay for it, and no matter how little a jury might say he ought to pay for it, and yet in the progress of time through very recent cases, arising necessarily from the exigencies of the localities, in which they have arisen, the Supreme Court has decided what are called the Drainage cases and the Mining cases.

In 1905, there came before the Court (in 198th U. S.), the case of Clark *vs.* Nash. In that case, one land-owner, without incorporation, was said to be entitled to summon a jury and have a condemnation of the land of his neighbor, for the purpose of conducting a stream from his own land across the land of his neighbor, to another piece of land belonging to the condemner. Do you see the full import? Do you see that there was no question of public service in any wise? It was the meeting of the necessity of an individual at the expense of another individual. It was simply the necessity of making a farm upon this piece of land for the benefit of this individual, and the taking of the land of the other individual was because of that individual interest. The reasoning of the Court is plain, whether it be logical, or whether it be conclusive, or not. The Court said that the Legislature had decided it to be a public use; that the Legislature had said that under the circumstances surrounding the arid States in the extreme Northwest, in which such legislation had prevailed, it was entirely competent for one man to take the property of another man for drainage, upon paying him such compensation as a third entity, a jury, might say he was entitled to. Look at the consequences. A man in Georgia has a stream running through his land. Another man has a farm. The man who has the farm desires to improve it by irrigation; and the land of the third man intervenes, and the Court says that the man whose farm is arid, has the right to conduct a stream of water from the stream beyond, across the land of his neighbor into

his own land, and the only possible excuse that can be made is the declaration that that is due process of law, and that that is a public use,—the reasoning being that it tends to help the public. In Utah, where the case arose, irrigation was necessary, and not for the whole public, but merely for those persons who required that their farms should be irrigated, and yet the Court said that those farms worked out a general benefit to the community through the individual making direct benefit himself therefrom, and through that community the benefit came to the public. It was not necessary that the community even should have a common public use to be met, but any particular individual, through whom the general welfare of the public might be advanced, could exercise this privilege. If that be true, then, when a saw-mill man in Georgia desires to run an isolated track for skidding logs from the timber to his saw-mill, and the Legislature of Georgia conceives that the timber business is a profitable and necessary business in this State, and declares that the running of the railroad from the saw-mill to the timber is a public use, then everybody between the saw-mill and the timber is subjected to the private interest of the saw-mill owner, and the incidental advantage or benefit to the public is made a stalking-horse, by which one man's property is taken for the direct pecuniary advantage of another man. Such a statute exists in Alabama; another statute exists, allowing a grist-mill owner to condemn land for his own purposes. Those statutes have not been tested, so far as I know, but clearly, when they come before the Supreme Court of the United States, it will say that this grist-mill owner has the right to flood the neighbors above for miles, if it be necessary, in order that dollars may go into his pocket, because of the incidental benefit to the general public resulting from the operation of the mill.

The Court in a case still later has taken the same ground, but in this particular case there was simply one individual, so far as the record of the Court shows, interested. I refer to the case of Strickley *vs.* Highland Boy

Gold Mining Company in the 200th U. S. In that case it was decided that a mine-owner has the right to condemn property for putting his piers across the lands of other people, in order that an aerial tramway carrying his ore from place to place might be constructed. It proceeded upon the idea that there were mines in Nevada, and that those mines needed encouragement, because the people generally were dependent upon them, but the prime effect was necessarily the increasing of the profits of the mine-owner, and the effect upon the public was entirely incidental and remote, and yet, as I have stated, the result is that, in order that a man, who controls a mine in one of the Western States, may reach out and carry his ore a hundred miles, he can condemn any property intervening between him and the mode of transportation.

A result not adverted to by the Supreme Court is, that under the well recognized rule, when the Legislature indicates a public use, that fixes the necessity for that use, and the person desiring to condemn has the right to locate the place where the use shall be fixed, and under the doctrine of these cases, if a mine-owner chooses to put his piers for his trolley line in the yard, or where a man's home stands, then he would have the right to do it, because the Legislature had given him the right to condemn and take the property of another man for his own use.

I pass from that to another phase. There is a case of State Bank *vs.* Haskell, reported in 219th United States, in which the Court decided that what is called the "Bank Guarantee Fund Law," was valid and constitutional, the point of it being that one bank can be made to contribute to the support of its competitor,—the strong bank, officered by men of character, who have built up their own business, can be made to sustain the banks which are not conducted by men of character and ability, and, in case they fail to sustain them, the strong banks shall be made to pay the loss to depositors. I am not quite clear but that upon general principles of public policy, this is not tenable, but the point I wish to call your attention to is, that in that

case the Supreme Court of the United States said that the power of the public, through the Legislature, is to be determined by the prevalent sense of morality, or by preponderance of public opinion as to what may be immediately necessary for the interests of the public. In other words, private rights and private property may depend upon the shifting waves of opinion of the populace from day to day; your rights and mine shall depend upon the predominating public opinion as to what may be right and may be necessary. That means this, simply: No court can go down to the people and find what is public opinion; there must be some representative of that public opinion; and that representative, under constitutional government, is the Legislature; and it simply resolves itself into this last analysis, that in any case, and in every case, where the Legislature says that one man's property shall be taken for another man's use, its action is final, and determinative as the epitome of the public thought.

A new phase of the same thing has been considered by the Supreme Court of Maine. In the Opinion of the Justices, 103 Maine, the Judges of that Court decided that legislation to restrict the cutting of trees on land by the owner of it, without compensation to him, in order to prevent or diminish droughts and freshets, and to protect, preserve and maintain the natural water supply of springs, streams, ponds and lakes, etc., and to prevent or diminish injurious erosion of the land, and the filling up of the rivers, ponds and lakes, would not be unconstitutional. Acting upon this idea, apparently legislators have from time to time introduced into the Legislature of the State of Florida bills prohibiting owners of turpentine lands from turpentining a tree less than a given number of inches in size, and from turpentining certain trees at all, and from turpentining for a number of years exceeding the number fixed in the bill. The theory of these bills is that an industry in Florida, prominent at this time, is the turpentine industry, and since a large number of people are dependent upon this industry, and since the cutting of the trees

might endanger that industry or decrease the water supply, or increase it unduly, the owner of the land must be made to preserve his own property for the benefit of the public, whether he desires it or not. If the main opinion be correct, then would not the proposed Florida legislation be constitutional? And if constitutional, does it not bring us to this point, that there must be an abandonment of the limitation of the old rule, that a man shall so use his own property as not to injure his neighbor, and an extension of it so as to command him not to use his property at all, and not to have any of the rights of dominion over it, because the use of it might incidentally affect the prosperity or welfare of the community? If a man cannot destroy his property, because the continued existence of it is productive of a large benefit to a community, or locality, or State, as if there be erected in a city a hotel, and the existence of that hotel is the sole cause of the prosperity of the city, as is perhaps the case in St. Augustine, Florida, then could not the Legislature prohibit the owner of the hotel from tearing it down, because such destruction of it would tend to the detriment of the country in which it was located? The inquiry at least indicates what legislative action might be considered to be constitutional, and suggests the rapidity of the tendency as to which I have spoken. The courts commence with a broad, general definition of the public and public servants, and regulates those public servants in their relations to the public. Then it circumscribes the limits of "the public," and calls even those who insure in insurance companies, "the public." Then it descends through intermediate decisions to the individual himself, and announces that any individual may, if there be an incidental benefit to a large number of other persons from the operation of a business carried on by him, condemn the property of his neighbors, and take it for what perhaps may be just compensation, so far as the actual monetary value is concerned, but which is the deprivation of the individual of his property at the will of another individual.

As a practical man will do, in considering questions of this kind, we naturally ask ourselves, what is the cause? And then, what is the remedy? If these decisions appear logical, then the cause is plain. It is simply the operation of logic in the minds of the judges who have decided the cases. If the decisions be not logical, then we must look again, and, we look, we can see the cause,—the judges have progressed in their ideas because the people have progressed. The judges are human beings. They take their cue from the current of thought, not consciously always, but unconsciously, most frequently, and, if they did not, they would not be fit judges to represent the progressive ideas that obtain from decade to decade, and from century to century. Decisions can be made to-day which could not have been made, possibly, one hundred years ago, or fifty years ago, and conversely, decisions which were made at that time, could not be made to-day. Does any well-informed and thoughtful lawyer think for a moment that, if the issues were presented to the Supreme Court of the United States now, which were involved in the Dartmouth College case, we would have anything like a similar decision to-day? Does any man believe that the Charles River Bridge case could be decided to-day as it was then? Does any lawyer, or publicist, believe that the Dred Scott decision, if it were before our present Supreme Court, would have a single voice to sustain it? Is there a remedy? I am not an Ezekiel; I cannot prophesy what will come, but we do know that there can be no remedy for decisions of a court, which are simply reflections of the opinions of the public. You might as well ask the animals of the frozen zone to change the white of their apparel, as to ask the judges to be independent of the minds with which they are encompassed, and with which they deal day by day. You cannot change the judges; you cannot change human nature; and so long as this progress in people and in their belief is going forward, there will be a progression of the judges themselves. There are periods of retrogression and rebound, but gradually the whole system moves forward, and,

while there are judges who stand firm for a time, for time-honored principle or precedent, in the end they yield; or, if they do not, they die or retire, and others take their places. So that there is no remedy, and we have simply, as observers, to stand aside and let the system grow, and then do what we can to stem the tide.

Mr. President, I have no climax. Your President on yesterday said that a climax was not necessary. It clearly is not necessary, where there is no oratory, and no rhetoric, and there has been neither; nor has there been any intentention of either, in the little that I have said to you.

The Georgia Bar Association showed me the great courtesy and honor to ask me to come here, and I came because I desired to reciprocate the courtesy, and because of the extreme pleasure that it gives me to be among the members of your Association,—especially because it is an Association of the Bar of Georgia.

It may be a little personal, but I feel that Georgia is a foster mother to me, as I was educated in this State, and met, during my college course, many of the most eminent minds, that have since come into prominence in the State of Georgia, and I can truly say of the Bar of Georgia, that their names are as well known to me, as those of the members of the Bar of the State of Florida. I am glad of the opoprtunity to be here, for the purpose of expressing my appreciation of the compliment bestowed, and of saying to you that what I have said is merely to suggest a thought, not to suggest a remedy, and perhaps to while away an hour that some of us might otherwise have passed vacantly absorbed in gazing upon that ocean which rolls in its majesty before us.

APPENDIX P.

RUFUS CHOATE'S SPEECH AGAINST POPULAR ELECTION OF JUDGES.

READ BY J. C. C. BLACK, OF AUGUSTA.

Responding to the invitation of your Executive Committee, to read a paper on this occasion upon such subject as I chose to select, I am about to do what is unusual, and may be, unprecedented. I trust you will concur in the opinion that it violates no propriety, and I am sure you will in the opinion that it is better than any original production I could contribute.

What I offer is taken from a speech delivered by Rufus Choate in 1853, in opposition to a popular demand prevailing over the country for the election of judges, and in opposition to any change in the Constitution of Massachusetts. These extracts have recently been quoted by Mr. McCall, a distinguished member of Congress from that State, in a discussion in the United States House of Representatives, on the proposed Constitutions of New Mexico and Arizona. It seems to me what Mr. Choate said is worthy of a place in the permanent records of this Association, not only for its literary excellence, but for the soundness of the views he expressed, and that it is altogether appropriate at a time when the question of the recall of judges is being freely discussed. It also bears upon the question of the proper mode of choosing the judiciary, a subject that has heretofore been discussed in this Association.

Mr. Choate said:

"Dismissing for a moment all theories about the mode of appointing him or the time for which he shall hold office,

sure I am that we all demand that as far as human virtue, assisted by the best contrivances of human wisdom, can attain to it, he shall not respect persons in judgment. He shall know nothing about the parties; everything about the case. He shall do everything for justice; nothing for himself; nothing for his friends; nothing for his patron; nothing for his sovereign. If on one side is the executive power and the legislature and the people—the sources of his honors, the givers of his daily bread—and on the other an individual, nameless and odious, his eye is to see neither, great nor small attending only to the 'trepidations of the balance.' If the law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual, nameless or odious, on the other, and he believes it to be against the Constitution, he must so declare it, or there is no judge.

"I would have him one who might look back from the venerable last years of Mansfield or Marshall and recall such testimonies as these to the great and good judge:

'The young men saw me, and hid themselves; and the aged arose and stood up.

'The princes refrained talking, and laid their hand upon their mouth.

'When the ear heard me, then it blessed me, and when the eye saw me, it gave witness to me.

'Because I delivered the poor that cried, and the fatherless, and him that had none to help him.

'The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy.

'I put on righteousness and it clothed me. My judgment was as a robe and a diadem. I was eyes to the blind, and feet was I to the lame.

'I was a father to the poor, and the cause which I knew not, I searched out.

'And I brake the jaws of the wicked, and plucked the spoil out of his teeth."

'Give to the community such a judge, and I care little who makes the rest of the Constitution, or what party administers it. It will be a free government, I know.'"

He speaks thus of the qualities of a judge:

"In the first place, the qualities which fit him for the office are quite peculiar; less palpable, less salient, so to speak, less easily and accurately appreciated by cursory and general notice. They are an uncommon, recondite and difficult learning, and they are a certain power and turn of mind and cast of character which, until they come actually and for a considerable length of time and in many varieties of circumstances, to be displayed upon the bench itself, may be almost unremarked but by near and professional observers.

"The candidate is made the nominee of a party boss, and so nominated the candidate is put through a violent election, abused by the press, abused on the stump, charged ten thousand times over with being very little of a lawyer, and a good deal of a knave or boor; and after tossed on this kind of a blanket for some uneasy months is chosen by a majority of ten votes out of one hundred thousand, and comes into court breathless, terrified, with perspiration in drops on his brow, wondering how he ever got there, to take his seat on the bench. And in the very first cause he tries he sees on one side the counsel who procured his nomination in caucus, and has defended him by pen and tongue before the people, and on the other the most prominent of his assailants, one who has been denying his talents, denying his learning, denying his integrity, denying him every judicial quality and every quality that may define a good man before half the counties in the State. Is not this about as infallible a recipe as you could wish to make a judge a respecter of persons? Will it not inevitably load him with the suspicion of partiality, whether he deserves it or not?"

The argument was urged that a judge should be elected, as well as a governor or members of the Legislature, and to this Mr. Choate replied as follows:

"It seems to me that such an argument forgets that our political system, while it is purely and intensely republican, within all theories, aims to accomplish this two-fold object, to-wit, liberty and security. To accomplish this two-fold object, we have established a two-fold set of institutions and instrumentalities—some of them designed to develop and give utterance to one; some of them designed to provide permanently and constantly for the other; some of them designed to bring out the popular will in its utmost intensity of utterance; some of them designed to secure life, and liberty, and character, and happiness, and property, and equal and exact justice against all will and against all power. These institutions and instrumentalities in their immediate mechanism and workings are as distinct and diverse, one from the other, as they are in their offices and in their ends. But each one is the more perfect for the separation, and the aggregate result is our own Massachusetts.

"Thus, in the law-making department, and in the whole department of elections to office of those who make and those who execute the law, you give the utmost assistance to the expression of liberty. You give the choice to the people. You make it an unusual choice; you give it to the majority; you make, moreover, a free press; you privilege debate; you give freedom to worship God according only to the dictates of the individual conscience.

"But to the end that one man, that the majority, may not deprive any of life, liberty, property, the opportunity of seeking happiness, there are institutions of security. There is a Constitution to control the Government; there is a separation of departments of Government; there is a judiciary to interpret and administer the laws, 'that every man may find his security therein.' And in constituting these provisions for security you may have regard mainly to the specific and separate objects which they have in view.

"Your security is greater; your liberty is not less. You assign to liberty her place, her stage, her emotions, her ceremonies; you assign to law and justice theirs. The stage, the emotions, the visible presence of liberty are in the mass

meeting; the procession by torchlight; at the polls; in the halls of legislation; in the voices of the press; in the freedom of political speech; in the energy, intelligence, and hope which pervade the mass; in the silent, unreturning tide of progression. But there is another apartment, smaller, humbler, more quiet, down in the basement story of our Capitol—appropriated to justice, to security, to reason, to restraint; where there is no respect of persons; where there is no high nor low, nor strong nor weak; where will is nothing, and power is nothing, and numbers are nothing—and all are equal and all secure before the law. Is it a sound objection to your system, that in that apartment you do not find the symbols, the cap, the flag of freedom? Is it any objection to a court room that you can not hold a mass meeting in it while a trial is proceeding? Is liberty abridged because the procession returning by torchlight from celebrating anticipated or actual party victory can not pull down a half dozen houses of the opposition with impunity, and because its leaders awake from intoxications of her Saturnalia to find themselves in jail for a riot? Is it any objection that every object of the political system is not equally provided for in every part of it? No, sir. 'Everything in its place, and a place for everything.' 'If the result is an aggregate of social and political perfection, absolute security, combined with as much liberty as you can live in, that is the state for you. Thank God for that; let the flag wave over it; die for it.'"

Then he concluded by this reference to the people of Massachusetts, which will apply in effect to the people of the whole country:

"Sir, that people have two traits of character, just as our political system in which that character is shown has two great ends. They love liberty; that is one trait. They love it and they possess it to their heart's content. Free as storms to-day, do they not know it and feel it—every one of them, from the sea to the Green Mountains? But there is another side of their character, and that is the old Anglo-Saxon instinct of property—the rational and the creditable

desire to be secure in life, in reputation, in the earnings of daily labor, in the little all which makes up the treasures and the dear charities of the humblest home; the desire to feel certain when they come to die that the last will shall be kept, the smallest legacy of affection shall reach its object, although the giver is in his grave; this desire and the sound sense to know that a learned, impartial, and honored judiciary is the only means of having it indulged. They have nothing timorous in them as touching the largest liberty. They rather like the exhilaration of crowding sail on the noble old ship and giving her to scud away before a fourteen-knot breeze; but they know, too, that if the storm comes on to blow, and the masts go overboard, and the gun-deck is rolled under water, and the leeshore, edged with foam, thunders under her stern, that the sheet-anchor and best bower then are everything! Give them good ground tackle and they will carry her around the world and back again, till there shall be no more sea."

SUGGESTED CONSTITUTION FOR LOCAL BAR ASSOCIATION

Affiliated with Georgia Bar Association.

ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar.

This Association shall be known as the....., and located at....., ...

ARTICLE II.

All members of the bar of.....County, (or Counties), in good standing shall be eligible to membership in this Association. All who sign the Constitution at the time of the organization hereunder shall become members. All others may become members as hereinafter provided. All Judges of Courts of Records residing in said county, so long as they remain in office, shall be honorary members of this Association, with all the rights and privileges of regular members, without liability for dues.

ARTICLE III.

The officers of this Association shall consist of a President, Vice-President, and Secretary and Treasurer, and an Executive Committee, to be composed of said officers and—others to be chosen by the Association,—one of whom shall be Chairman of the Committee. These officers and the members of this committee shall be elected at each annual meeting for the year ensuing; but the same person shall not be

elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon the recommendation of the Executive Committee. All elections for membership shall be by ballot. Three negative votes shall suffice to defeat an election to membership. Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association, and upon subscribing to the Constitution and paying the fee they shall become active members.

ARTICLE V.

Each member shall pay.....dollars to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws. This payment for the first year shall be paid when the member subscribes to the Constitution.

ARTICLE VI.

By-Laws may be adopted, repealed or amended at any annual meeting of the Asosciation by a majority vote of the members present; provided that the number voting for such by-law shall not be less than.....

ARTICLE VII.

The following Committees shall be annually appointed:

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.

3. On Legal Education and Admission to the Bar.
4. On Legal Ethics and Grievances.
5. On Membership.
6. On Memorials.

ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment, by the President; and the appointee shall hold office until the next meeting of the Association.

ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be invested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall elect; and those present at such meeting, not less than five, shall constitute a quorum. The Secretary shall give notice of the time and place of meeting. In addition to this the President and the Executive Committee may call such special meetings as may be necessary, from time to time.

ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession on conviction thereof in such manner as may be provided by the By-Laws.

ARTICLE XII.

This Constitution may be altered or amended by vote of three-fourths of the members present at any annual meeting; but no such change shall be made except upon the concurrent vote of at least a majority of all the members of the Association.

ARTICLE XIII.

The Code of Ethics of the Georgia Bar Association is the Code of Ethics of this Association, and binding upon the members thereof.

ARTICLE XIV.

Such By-Laws may be passed as will meet the necessities of this Association. Said By-Laws, however, not to be inconsistent with the By-Laws of the Georgia Bar Association.

ARTICLE XV.

At each annual meeting of this Association delegates to the Georgia Bar Association shall be elected, with an equal number of alternates, according to the representation to which this Association is entitled. Said election to be by ballot as may be provided by the By-Laws. The secretary to give such delegates a certificate of their election as their credentials to represent this Association in the meeting of the Georgia Bar Association.

ARTICLE XVI.

It shall be the duty of the Secretary of this Association, at least twenty days before the time fixed for the annual meeting of the Georgia Bar Association, to furnish to the Secretary of that Association a report giving the names of

the officers of this Association, the number of members, the names of any members who may have died during the preceding year, and the number of new members elected during the year, together with any other facts of general interest and any additional information which may be called for by the Secretary of the said Georgia Bar Association. The Secretary shall also furnish to the Secretary of the Georgia Bar Association the names of the delegates elected to represent this Association at the annual meeting of that Association.

CHARTER

OF

THE GEORGIA BAR ASSOCIATION

GEORGIA, BIBB COUNTY.

To the Superior Court of said County:

The petition of L. N. Whittle, Charles C. Jones, Jr., Henry Jackson, M. H. Blandford, Pope Barrow, George A. Mercer, Clifford Anderson, George N. Lester, Marshall J. Clarke, Robert Whitfield and W. B. Hill, respectfully showeth that they desire themselves and their associates, and their successors, to be incorporated under the name of "The Georgia Bar Association."

The organization for which incorporation is asked has no capital stock, and is not organized for individual pecuniary gain; but its object is to advance the science of Jurisprudence, promote the administration of Justice throughout the State, uphold the honor of the profession of the Law, and establish cordial intercourse among the members of the Bar of Georgia.

Petitioners pray that said corporation be invested with the power to contract, to sue and be sued, to have and use a common seal, to make By-Laws, binding on its members, not inconsistent with law, to receive donations by gift or will, to acquire and hold such property, real or personal, as is suitable to the purpose of its organization, to alienate the same in order to promote such purpose, to enforce good order, and generally to do all such acts as are suitable and necessary for the legitimate execution of the design and object of said Association. The Constitution and By-Laws adopted by the voluntary Association, under the name of "The Georgia Bar Association," at its meeting in Atlanta, August 1, 1883, and embodied in a printed pamphlet, shall be the Constitution and By-Laws of the corporation for which corpo-

rate existence is now here prayed, with power to amend the same, as therein provided. The several officers and committees of said voluntary Association shall be the officers of said corporation until their successors are chosen, as provided in said Constitution and By-Laws. The members of said voluntary Association who became members thereof at said meeting, on August 1, 1883, and who have since that time been elected members, shall become members of said corporation. All property, money, rights and interest of said voluntary Association now held by any officer thereof shall become the property of said corporation. Petitioners pray that they be incorporated for the term of twenty years, with the privilege of renewal. In view of the nature of their organization, petitioners are unable to state their place of doing business more definitely than to say that the meetings of said Association will be held at such places as may be designated by the Executive Committee.

Petitioners pray the court to grant an order for their incorporation as above set forth.

HILL & HARRIS,
Petitioners' Attorneys.

BIBB SUPERIOR COURT, April Term, 1884.

The foregoing petition, for the incorporation of "The Georgia Bar Association," having been duly filed and presented to the undersigned, as presiding Judge, in open Court, and it appearing that the application is legitimately within the purview and intention of the Statutes in such cases, made and provided, and that the formalities required in such cases have been duly complied with, it is ordered and adjudged that petitioners, their associates and successors be, and they are, hereby created a body corporate, under the name of "The Georgia Bar Association," with all the powers and authority prayed for in said petition, and the Constitution and By-Laws, officers, committees and members and property of the voluntary organization known as "The Georgia Bar Association," shall be, and become, the Constitution and

By-Laws, officers, committees and members and property of the corporation now created. Let these proceedings be recorded on the Minutes of Bibb Superior Court.

T. J. SIMMONS,
Judge Superior Court.

GEORGIA—BIBB COUNTY.

Clerk's Office, Superior Court.

I certify that the above and two foregoing pages contain a true and complete copy of all the proceedings had in said Court connected with the granting of a Charter to "The Georgia Bar Association," as the same appears from the records and files of said Court.

Witness my official signature and the Seal of said Court, this nineteenth day of July, 1884.

(SEAL) A. B. ROSS, Clerk.

The following resolution, offered by George N. Lester, at the annual meeting held at Atlanta, Ga., August, 13, 1884, was adopted, in regard to the foregoing:

RESOLVED, That this Association does hereby accept the Charter incorporating "The Georgia Bar Association," by the judgment of the Bibb Superior Court, and rendered at the April Term, 1884, and will henceforth proceed, under the provisions of said Charter, to operate from its date, and that said Charter and the petition therefor be printed in the proceedings of this meeting.

PROCEEDINGS TO REVIVE CHARTER.

GEORGIA, BIBB COUNTY.

To the Superior Court of said County:

The petition of A. L. Miller, of Bibb County, as President of the Georgia Bar Association; T. M. Cunningham, Jr., of Chatham County; S. P. Gilbert, of Muscogee County; E. P. S. Denmark, of Lowndes County; W. A. Wimbish, of Fulton County, and Samuel H. Sibley, of Greene County, as Vice-

Presidents of said Association; Orville A. Park, of Bibb County, as Secretary of said Association; Z. D. Harrison, of Fulton County, as Treasurer of said Association, and Robert C. Alston, of Fulton County; Joseph Hansell Merrill, of Thomas County; John J. Strickland, of Clarke County, and William W. Gordon, Jr., of Chatham County, who, together with the President, Secretary and Treasurer above named, constitute the Executive Committee of the said The Georgia Bar Association, said officers and Executive Committee being the Trustees of said Association, and said petitioners filing this petition on behalf of themselves, and all other members of the said The Georgia Bar Association, respectfully shows:

1. That under and by virtue of an order and judgment of this honorable Court granted at the April Term, 1884, thereof, The Georgia Bar Association was duly and regularly incorporated.

2. That the Charter granted as aforesaid was duly accepted by the incorporators and their associates, and that the said The Georgia Bar Association has ever since existed and acted as a body corporate under and by virtue of the charter aforesaid.

3. That the corporation has no capital stock and was not organized for individual pecuniary gain, but the object thereof, as set forth in the petition for incorporation is "To advance the Science of Jurisprudence, promote the administration of Justice throughout the State, uphold the honor of the profession of the Law, and establish cordial intercourse among the members of the Bar of Georgia."

4. That the period of time for which the said Association was incorporated was twenty (20) years, with the privilege of renewal at the expiration of said time.

5. That the charter of said corporation has now expired, more than twenty (20) years having elapsed since the same was granted, as hereinabove set forth.

WHEREFORE, The premises considered, your petitioners pray that the Charter granted as aforesaid to the said The Georgia Bar Association may be revived for the same purposes as were set forth in said original Charter, and that

the said corporation as revived may stand clothed with all the powers, and possessed of all the rights, and be subject to all the debts, liabilities and burthens of the said The Georgia Bar Association, and that said corporation so revived may exercise all the powers and privileges herein prayed for for the full term of twenty (20) years, with the privilege of renewal at the expiration of said time.

P. W. MELDRIM, Z. D. HARRISON,
ORVILLE A. PARK, S. P. GILBERT,
Petitioners' Attorneys.

GEORGIA—BIBB COUNTY.

In person appeared Miss Essie McMillan, who on oath says that she is the Treasurer of The Telegraph Publishing Company, and that said Telegraph Publishing Company is the publisher of The Macon Telegraph, a newspaper published in the city of Macon, said newspaper being the official gazette of Bibb County, Georgia.

She further says that a certified copy of the above and foregoing petition to revive the Charter of The Georgia Bar Association was published in the said Macon Telegraph newspaper on the following dates, to-wit: April tenth (10th), seventeenth (17th), twenty-fourth (24th), and May first (1st), 1907.

ESSIE MCMILLAN.

Sworn to and subscribed before me, this the twenty-seventh day of May, 1907.

Bibb County, Georgia.
C. R. WRIGHT, N. P.

IN BIBB SUPERIOR COURT, April Term, 1907.

The foregoing petition for the revival of the Charter of The Georgia Bar Association having been duly filed and presented to the undersigned as presiding Judge in open Court, and it appearing that the facts stated therein are true, and that said application is legitimately within the purview and intention of the statutes in such cases made and provided, and that the formalities required in such cases have been

duly complied with, it is ordered and adjudged that the Charter of the said The Georgia Bar Association heretofore granted by order and judgment of this Court at the April Term, 1884, thereof be, and the same is, hereby revived, and the said corporation as so revived shall stand clothed with all the powers and possessed of all the rights and be subject to all the debts, liabilities and burthens of the old corporation which is revived in it. This revival of said Charter to be for the period of twenty (20) years, with the right of renewal at the expiration of said period. Let this order be entered upon the minutes of Bibb Superior Court, and these proceedings be recorded as required by law.

This twenty-seventh day of May, 1907.

W. H. FELTON, JR.,
Judge Superior Court, Macon Circuit.

Clerk's Office, Superior Court.

GEORGIA—BIBB COUNTY.

I, Robert A. Nisbet, Clerk of the Superior Court of Bibb County, Georgia, do hereby certify that the above and foregoing four (4) type-written pages contain a true and complete copy of all the proceedings had in the said Superior Court connected with the revival of the Charter of "The Georgia Bar Association," as the same appears from the records and files of said Court.

Witness my official signature and the Seal of said Court, this the twenty-seventh day of May, 1907.

ROBERT A. NISBET,
Clerk Superior Court, Bibb County, Georgia.
(Seal Bibb Superior Court.)

CONSTITUTION and BY-LAWS

OF

THE GEORGIA BAR ASSOCIATION

Revised by Special Committee Appointed at the Annual Meeting of 1906.

Amended and adopted at the Twenty-Fourth Annual Meeting, Tybee Island, May 30 and 31, 1907.

CONSTITUTION.

ARTICLE I.

The object of this Association shall be to advance the Science of Jurisprudence, promote the administration of Justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar.

This Association shall be known as The Georgia Bar Association.

ARTICLE II.

All members of the bar of this State in good standing shall be eligible to membership in this Association.

The Governor, the Justices of the Supreme Court, Judges of the Court of Appeals, the Attorney General and the Judges of the Superior and City Courts of this State, and the Judges of the Federal Courts resident in this State, and the Clerks of the Supreme Court and of the Court of Appeals, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members without liability for dues.

ARTICLE III.

The officers of this Association shall consist of a President, five Vice-Presidents, a Secretary and a Treasurer.

There shall also be an Executive Committee composed of the President, Secretary, Treasurer and four members to be chosen by the Association, one of whom shall be Chairman of the Committee.

These officers and the members of this Committee shall be elected at each annual meeting for the year ensuing; but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association upon the recommendation of the Executive Committee. All elections for members shall be by ballot. Five negative votes shall suffice to defeat an election to membership.

Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association.

ARTICLE V.

Each member shall pay five dollars ($5.00) to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws.

ARTICLE VI.

By-Laws may be adopted, repealed or amended at any annual meeting of the Association, by a majority vote of the members present; provided, that the number voting for such amendment shall not be less than twenty-five.

ARTICLE VII.

The following committees shall be annually appointed:

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.
3. On Federal Legislation.
4. On Interstate Law.
5. On Legal Education and Admission to the Bar.
6. On Legal Ethics and Grievances.
7. On Membership.
8. On Memorials.
9. On Reception.

ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be invested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall select, and those

present at such meeting, not less than twenty-five, shall constitute a quorum. The Secretary shall give thirty days' notice of the time and place of the meeting.

ARTICLE XI.

Any member of this Association may be suspended or expelled for misconduct in his relation to this Association or in his profession, on conviction thereof in such manner as may be provided by the By-Laws.

ARTICLE XII.

This Constitution may be altered or amended by a vote of three fourths of the members present at any annual meeting, but no such change shall be made except upon the concurrent vote of at least thirty members.

ARTICLE XIII.

At the regular meetings of this Association the accredited representatives of the respective local bar associations upon the basis of one delegate from each association, and one additional delegate for each ten members above the five necessary to organize, shall be entitled to all the privileges of regular members during such meetings except that they shall be denied the right to vote unless they are members of this Association. (Adopted June 4th, 1909.)

ARTICLE XIV.

There shall be published in the annual report of the proceedings of this Association a list of all local associations in this State which may be affiliated with this Association, showing the name, location, officers and number of members of such associations, and the delegates selected to represent such local associations at the annual meeting of this Association, with such other facts regarding said associations as the Executive Committee may from time to time see fit to publish. (Adopted June 4th, 1909.)

BY-LAWS.

ARTICLE I.

The President shall preside at all the meetings of the Association, and shall open each meeting with an annual address.

In case of his absence, one of the Vice-Presidents shall preside.

ARTICLE II.

The Secretary shall keep a record of all meetings of the Association, and of all matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association. He shall notify the officers and members of their election, shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be three hundred dollars ($300.00) *per annum.*

ARTICLE III.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse all funds of the Association. He shall report annually, and oftener if required. He shall keep regular accounts, which shall at all times be open to the inspection of members of the Association. His accounts shall be audited by the Executive Committee. He shall execute a bond with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of two thousand dollars ($2,000.00) for the use of the Association, and conditioned that he will well and faithfully perform the duties of the office. The cost of this bond shall be paid by the Association. The Treasurer's salary shall be one hundred and fifty dollars ($150.00) *per annum.*

ARTICLE IV.

The Executive Committee shall meet upon the call of the Chairman. They shall arrange the program for the annual meetings and make such regulations, not inconsistent with the Constitution and By Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, and shall report at the annual meeting of the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same.

ARTICLE V.

At each annual, stated or adjourned meeting of the Association the order of business shall be prescribed by the Executive Committee, except as provided in these By-Laws. This order of business may be changed by the vote of a majority of the members present.

ARTICLE VI.

All applications for membership in the Association shall be in writing, signed by the applicant, and addressed to the Executive Committee. The application shall be endorsed by a member of the Association, and shall be accompanied by the first year's dues.

ARTICLE VII.

In pursuance of Article VII of the Constitution, there shall be the following standing committees:

1. A Committee on Legislation, consisting of three members, to be appointed by the President during the session of the Association. This committee shall prepare for legis-

lative action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of this committee to make due presentation of such proposed legislation to the appropriate legislative committees or bodies.

2. A Committee on Jurisprudence, Law Reform, and Procedure, who shall be charged with the duty of reporting such amendments of the law as in their opinion should be adopted and of scrutinizing all proposed changes in the law, and when necessary reporting upon the same. It shall also be the duty of this committee to observe the practical working of the judicial system of this State and recommend such changes therein as observation or experience may suggest.

3. A Committee on Federal Legislation, who shall be charged with the duty of reporting upon such Federal Legislation proposed or enacted as may be of interest to the legal profession, and especially such as affects the Federal judicial system, procedure and practice in the Federal Courts.

4. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest.

5. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes are expedient in the system and mode of legal education, and of admission to the practice of the profession in the State of Georgia.

6. A Committee on Legal Ethics and Grievances, who shall be charged with the duty of considering and reporting upon matters relating to the ethics of the profession, and of taking such action as the Association may direct, in case of departure from these principles by any member of this Association and of hearing all complaints which may be made in matters affecting the interest of the legal profession or the professional conduct of any member of this Association, or the administration of justice, and reporting the same to the Association, with such recommendations as

they may deem advisable. Said Committee shall, on behalf of the Association, institute and carry on such proceedings against such offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of the funds of the Association.

7. A Committee on Membership, who shall take such action as may be best in their judgment to increase the membership of the Association.

8. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting, such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some deceased member of the bench or bar of Georgia, having special reference to his professional career, and have the same presented at the annual meeting.

9. A Committee on Reception, who shall be charged with the duty at all meetings of the Association of promoting social intercourse and fraternity among the members.

ARTICLE VIII.

Each of the standing committees, except the Committee on Legislation, shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof and of all special committees shall be transmitted by the President to the Secretary within thirty days from the adjournment of each annual meeting. The Secretary shall within thirty days after receipt thereof from the President, notify each committeeman of his appointment, giving a full list of his committee.

ARTICLE IX.

The standing Committee on Jurisprudence, Law Reform, and Procedure shall furnish the Secretary, at least thirty days before each annual meeting, with a draft of their re-

port, which is to be submitted at the meeting. The Secretary shall on receipt of said report, have the same printed and distributed to the members of the Association at least ten days before the date fixed for the annual meeting.

ARTICLE X.

Whenever a complaint shall be preferred against a member of the Association for misconduct in his relation to the Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Legal Ethics and Grievances, in writing, subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The Committee shall thereupon examine the complaint and if they are of the opinion that the matters therein mentioned are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than ten days, of the time and place when the Committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his office, during office hours, properly addressed to him.

If after hearing his explanation the Committee shall deem it proper that there be a trial of the charge, they shall cause similar notice, of ten days, of the time and place of the trial, to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as nearly as may be to the provisions of sections 4431 to 4445 inclusive, of the Civil Code of Georgia.

ARTICLE XI.

The Treasurer is authorized to pay the actual expenses of the members of the Executive and other standing committees of the Association in attending meetings called by the chairman of the respective committees upon the rendition to the Treasurer of an itemized account of such expenses, approved by the chairman.

ARTICLE XII.

A part of the order of business of the first day of the annual meeting of the Association shall be the election of a Committee on Nominations, consisting of five members, who shall be charged with the duty of reporting to the Association during the second day's session thereof, nominations for the officers of the Association, and members of the Executive Committee, to be elected at that meeting, but nothing herein provided shall prevent nominations of candidates to fill the respective offices, to be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name.

All elections, whether to office or to membership, shall be by ballot, and a majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

ARTICLE XIII.

The dues of the Association shall be payable on or before the first day of May for each year, and any member failing to pay his dues shall be in default, and if such default continues for three years, the name of such member shall be stricken from the roll of membership. Applications for reinstatement may be made and granted on such terms as may be deemed best by the Executive Committee.

The Treasurer shall on the 15th day of April of each year, inform each member of the Association that on the first day of May next, the Treasurer will draw at sight on said member for the amount due by him to the Association, and on the first day of May following, the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

ARTICLE XIV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

ARTICLE XV.

Whenever an active member of the Association shall, by reason of his election or appointment, become an honorary member *ex-officio,* as provided by the Constitution, the Secretary shall transfer the name of such member from the roll of active members to the roll of honorary members, and shall re-transfer the name to the active roll when such member shall no longer be entitled to honorary membership.

ARTICLE XVI.

If the Executive Committee shall determine that it is necessary for the Association to hold any meeting other than the annual meeting, during the year, the same shall be held at such time and place as the Executive Committee may fix, notice of which shall be given by the Secretary.

ARTICLE XVII.

All addresses, reports and other papers read at any meeting of the Association shall be transmitted to the Secretary within thirty days from the adjournment of such meeting, and if not so furnished, the Executive Committee will proceed to publish the proceedings without such papers.

ARTICLE XVIII.

No resolution complimentary to any paper or address or to any member or officer shall be entertained.

RESOLUTIONS ADOPTED JULY 2, 1905.

WHEREAS, It is desirable to have as large an attendance as practicable of the lawyers of the State upon the annual sessions of this Association; and,

WHEREAS, Many members of the bar of the State are prevented from attending the annual convention by reason of the fact that many of the courts of the State are in session at the time of the meeting of the Bar Association; therefore, be it

Resolved, first, That the judges of the several courts of this State be, and they are, hereby respectfully requested to so arrange their calendars and terms of court as that the members of the Bar of the several courts of the State may have an opportunity to attend the annual sessions of this Association.

Resolved, second, That as soon as the Executive Committee of this Association decides upon the time and place of meeting of this Association, each year, the Secretary of this Association shall as early as practicable thereafter notify each of the judges of the several courts of the State of the time and place of meeting of the Association, and respectfully urge a compliance with the above request.

OFFICERS
OF
THE GEORGIA BAR ASSOCIATION
FOR PAST TERMS

1883-1884.

President

L. N. WHITTLE.

Vice-Presidents

1—CHARLES C. JONES, JR. 3—M. H. BLANDFORD.
2—HENRY JACKSON. 4—POPE BARROW.
5—GEORGE A. MERCER.

Secretary and Treasurer—W. B. HILL.

1884-1885.

President

WILLIAM M. REESE

Vice-Presidents

1—F. H. MILLER. 3—W. S. BASSINGER.
2—L. F. GARRARD. 4—W. M. HAMMOND.
5—H. P. BELL.

Secretary W. B. HILL.

Treasurer S. BARNETT, JR.

1885-1886.

President

JOS. B. CUMMING.

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3—P. W. MELDRIM.
4—M. P. REESE.
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1891-1892.

President

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2—JOHN I. HALL. 4—JOHN W. PARK.
5—W. H. FLEMING.

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Vice-Presidents

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2—W. M. HAMMOND. 4—W. H. FLEMING.

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1893-1894.

President

LOGAN E. BLECKLEY.

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2—C. N. FEATHERSTON. 4—A. H. MCDONELL.
5—C. C. SMITH.

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1894-1895.

President

WILLIAM H. FLEMING.

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2—L. C. LEVY. 4—JNO. H. MARTIN.
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1895-1896.

President

JOHN W. PARK.

Vice-Presidents

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2—BURTON SMITH. 4—C. C. SMITH.
5—H. MCWHORTER.

Secretary JOHN W. AKIN.
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1896-1897.

President

HENRY R. GOETCHIUS.

Vice-Presidents

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2—W. C. GLENN. 4—A. H. MCDONELL.
5—H. H. PERRY.

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1897-1898.

President

JOHN W. AKIN.

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2—L. C. LEVY. 4—JOHN F. DELACY.
5—P. W. MELDRIM.

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1898-1899.

President

HAMILTON McWHORTER.

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2—J. HANSELL MERRILL. 4—W. M. HENRY.
5—T. J. CHAPPELL.

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1899-1900.

President

JOSEPH R. LAMAR.

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2—CHARLTON E. BATTLE. 4—B. H. HILL.
5—JOHN W. BENNETT.

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Treasurer Z. D. HARRISON.

1900-1901.

President

H. W. HILL.

Vice-Presidents

1—CHARLTON E. BATTLE. 3—B. H. HILL.
2—JOHN C. HART. 4—A. F. DALY.
5—J. B. BURNSIDE.

Secretary ORVILLE A. PARK.

Treasurer Z. D. HARRISON.

1901-1902.

President

CHARLTON E. BATTLE.

Vice-Presidents

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2—PETER W. MELDRIM. 4—T. W. HARDWICK.
5—W. C. BUNN.

Secretary ORVILLE A. PARK.

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1902-1903.

President

BURTON SMITH.

Vice-Presidents

1—P. W. MELDRIM. 3—W. W. BACON, JR.
2—A. P. PERSONS. 4—W. M. TOOMER.
5—W. K. MILLER.

Secretary ORVILLE A. PARK.

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1903-1904.

President

PETER W. MELDRIM.

Vice-Presidents

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2—JOHN J. STRICKLAND. 4—W. M. HAMMOND.
5—W. K. FIELDER.

Secretary ORVILLE A. PARK.
Treasurer. Z. D. HARRISON.

1904-1905.

President

A. P. PERSONS.

Vice-Presidents

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2—J. J. STRICKLAND. 4—ARTHUR G. POWELL.
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1905-1906.

President

T. A. HAMMOND.

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2—B. S. MILLER. 4—N. L. HUTCHINS.
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1906-1907.

President

A. L. MILLER.

Vice-Presidents

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1907-1908.

President

SAMUEL B. ADAMS.

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2—E. R. BLACK. 4—HEWLETT A. HALL.
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1908-1909.

President

JOSEPH HANSELL MERRILL.

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1909-1910.

President

T. M. CUNNINGHAM, JR.

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2—JOHN E. DONALSON. 4—A. W. EVANS.
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1910-1911.

President

JOEL BRANHAM.

Vice-Presidents

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2—W. H. BARRETT. 4—N. L. HUTCHINS, JR.
5—HARLEY S. LAWSON.

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Treasurer. Z. D. HARRISON.

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Third—R. D. MEADER.....Brunswick
Fourth—L. W. BRANCH.....Quitman
Fifth—THOS. J. BROWN.....Elberton

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Permanent Commission on the Revision of the Judicial System and Procedure in the Courts. Appointed Under Resolution of the Georgia Bar Association.

Judge Andrew J. Cobb, Chairman.....Athens
Orville A. Park.....Macon
J. H. Merrill.....Thomasville
P. W. Meldrim.....Savannah
W. K. Miller.....Augusta
John L. Hopkins.....Atlanta
W. H. Griffin.....Valdosta
J. R. Pottle.....Blakely
T. S. Felder.....Macon
Wright Willingham .....Rome
Samuel H. Sibley.....Union Point

SECTION OF LEGAL EDUCATION

Organized at the Twenty-Seventh Annual Meeting Held at Athens, Georgia, on June 9th, 1910.

Report of Committee of Rules and Officers:

The Committee for the purpose appointed herewith tender their report of rules for the Section of Legal Education, and of Officers for the Section for the current year.

J. R. LAMAR, Chairman,
ORVILLE A. PARK,
SYLVANUS MORRIS.

SECTION OF LEGAL EDUCATION.

1. This section of the Georgia Bar Asosciation shall be known as the Section of Legal Education, and shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

2. The officers of the section shall be a Chairman, a Secretary and an Executive Committee, composed of the Chairman, Secretary and the Chairman of the Committee on Legal Education and Admission to the Bar of the Association. Their duties and powers are those usually accompanying the several offices. Their terms shall be one year.

3. The object shall be the discussion of methods of legal education, and recommendations may be made to the Association for consideration and action.

4. The members of the section are: The State Bar Examiners, the members of the Committee on Legal Education and Admission to the Bar, the members of the faculties of the law schools of the State, and any member of the Asosciation who may desire to enroll.

OFFICERS.

Chairman, Hon. Alex. C. King, Atlanta, Ga.
Secretary, Prof. T. F. Green, Athens, Ga.

AMERICAN BAR ASSOCIATION CANONS OF PROFESSIONAL ETHICS

Adopted by the Georgia Bar Association June 4, 1909.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belongs commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—*George Sharswood.*

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—*Edward G. Ryan.*

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker. the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—*Abraham Lincoln.*

[Note.—The following Canons of Professional Ethics were adopted by the American Bar Association at its thirty-first annual meeting at Seattle, Washington, on August 27, 1908, and by the Georgia Bar Association, at its twenty-sixth annual meeting at Warm Springs, Georgia, on June 4, 1910.

The Canons were prepared by a committee composed of
Henry St. George Tucker, Virginia, Chairman.
Lucien Hugh Alexander, Pennsylvania, Secretary.
David J. Brewer, District of Columbia.
Frederick V. Brown, Minnesota.
J. M. Dickinson, Illinois.
Franklin Ferriss, Missouri.
William Wirt Howe, Louisiana.
Thomas H. Hubbard, New York.
James G. Jenkins, Wisconsin.
Thomas Goode Jones, Alabama.
Alton B. Parker, New York.
George R. Peck, Illinois.
Francis Lynde Stetson, New York.
Ezra R. Thayer, Massachusetts.]

I.

PREAMBLE.

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It can not be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II.

THE CANONS OF ETHICS.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. *The Duty of the Lawyer to the Courts.* It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. *The Selection of Judges.* It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. *Attempts to Exert Personal Influence on the Court.* Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. *When Counsel for an Indigent Prisoner.* A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. *The Defense or Prosecution of Those Accused of Crime.* It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. *Adverse Influences and Conflicting Interests.* It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. *Professional Colleagues and Conflicts of Opinion.* A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause can not agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to coöperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. *Advising Upon the Merits of a Client's Cause.* A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which

justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. *Negotiations With Opposite Party.* A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. *Acquiring Interest in Litigation.* The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

11. *Dealing with Trust Property.* Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. *Fixing the Amount of the Fee.* In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay can not justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the

lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. *Contingent Fees.* Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

14. *Suing a Client for a Fee.* Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. *How Far a Lawyer May Go in Supporting a Client's Cause.* Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his

rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

16. *Restraining Clients from Improprieties.* A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

17. *Ill Feeling and Personalities Between Advocates.* Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. *Treatment of Witnesses and Litigants.* A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client can not be made the keeper of the lawyer's conscience in professional matters.

He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. *Appearance of Lawyer as Witness for His Client.* When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

20. *Newspaper Discussion of Pending Litigation.* Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. *Punctuality and Expedition.* It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. *Candor and Fairness.* The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of the witness, the language or argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. *Attitude Toward Jury.* All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. *Right of Lawyer to Control the Incidents of the Trial.* As to the incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. *Taking Technical Advantage of Opposite Counsel; Agreements With Him.* A lawyer should not ignore known

customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

26. *Professional Advocacy Other Than Before Courts.* A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect.* The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This can not be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of

the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. *Stirring up Litigation, Directly or Through Agents.* It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. *Upholding the Honor of the Profession.* Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. *Justifiable and Unjustifiable Litigations.* The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. *Responsibility for Litigation.* No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what causes he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He can not escape it by urging as an excuse that he is only following his client's instructions.

32. *The Lawyer's Duty in Its Last Analysis.* No client corporate, or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by com-

petent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

III.

Oath of Admission.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other States of the Union*—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of.....;

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth

*Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the Bar in all the other States require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by law as in the States named.

and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

We recommend this form of oath for adoption by the proper authorities in all the States and Territories.

INDEX AND SYNOPSIS OF CANONS

OFFICERS OF THE AMERICAN BAR ASSOCIATION

1911-1912.

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STEPHEN S. GREGORY.

Secretary
GEORGE WHITELOCK.

Assistant Secretary
W. THOMAS KEMP.

Treasurer
FREDERICK E. WADHAMS.

Vice-President for Georgia
SAMUEL B. ADAMS, Savannah

Member of General Counsel for Georgia
T. A. HAMMOND, Atlanta.

Local Council
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W. A. WIMBISH, Atlanta,
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ERNEST T. KONTZ, Atlanta.
JOHN L. TYE, Atlanta.

LOCAL BAR ASSOCIATIONS IN GEORGIA

Note.—This list was compiled from information obtained from the Secretaries of the Associations. The Secretary will be glad to be furnished with any additions, corrections or changes in the list.

Albany Circuit Bar Association.

President — EUGENE E. COX.
Vice-President — T. S. HAWES.
Secretary and Treasurer—R. G. HARTSFIELD.

Americus Bar Association.

President — J. E. SHEPPARD.
Vice-President — E. A. NISBET.
Secretary and Treasurer—HOLLIS FORT.

Bar Association of Ashburn.

President — JOHN B. HUTCHERSON.
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Athens Bar Association.

President — A. J. COBB.
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Atlanta Bar Association.

President — EUGENE M. MITCHELL.
Vice-President — J. D. KILPATRICK.
Secretary and Treasurer—JESSE M. WOOD.

Augusta Bar Association.

President — J. C. C. BLACK.
Vice-Presidents — JOS. B. CUMMING. JOS. R. LAMAR.
Secretary — GEO. T. JACKSON.
Treasurer — BRYSON CRAUL.

Bainbridge Bar Association.

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Vice-President — ALBERT H. RUSSELL.
Secretary and Treasurer—R. G. HARTSFIELD.

Brunswick Bar Association.

President — H. F. DUNWOODY.
Vice-President — D. W. KRAUSS.
Secretary and Treasurer—E. C. BUTTS.

Calhoun County Bar Association.

President — J. J. BECK.
Vice-President — H. M. CALHOUN.
Secretary — J. L. BOYNTON.
Treasurer — E. L. SMITH.

Columbus Bar Association.

President — H. R. GOETCHIUS.
Vice-President — E. J. WINN.
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Crisp County Bar Association.

President — E. F. STROZIER.
Secretary and Treasurer — WALTER F. HALL.

Dublin Bar Association.

President — J. E. BURCH.
Vice-President — J. A. THOMAS.
Secretary and Treasurer—R. D. FLYNT.

Early County Bar Association.

President — W. A. JORDAN.*
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Secretary and Treasurer—J. R. POTTLE.

Greene County Bar Association.

President — J. B. PARK.
Vice-President — GEO. A. MERRITT.
Secretary and Treasurer—F. B. SHIPP.

Macon County Bar Association.
(Has been incorporated, but no officers have been elected.)

Bar Association of the City of Macon.

President — JNO. P. ROSS.
Vice-President — W. J. GRACE.
Secretary — W. E. MARTIN, JR.
Treasurer — E. P. JOHNSTON.

*Deceased.

Moultrie Bar Association.

President — ROBT. L. SHIPP.
Vice-President — EDWIN L. BRYAN.

Bar Association of Savannah.

President — H. C. CUNNINGHAM.
Vice-President — S. B. ADAMS.
Secretary — T. G. BASSINGER.
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Spalding County Bar Association.

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President — G. S. JOHNSON.
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Waycross Bar Association.

President — J. L. SWEAT.
Vice-President — LEON A. WILSON.
Secretary and Treasurer—HARRY D. REED.

EXCHANGE LIST

The Georgia Bar Association exchanges its publications with the following Associations:

ASSOCIATION.	SECRETARY.
American Bar Association	George Whitelock, Baltimore, Md.
Alabama State Bar Association	Alexander Troy, Montgomery, Ala.
Arizona Bar Association	Paul Burks, Prescott, Arizona.
Bar Association of Arkansas	Roscoe R. Lynn, Little Rock, Ark.
California State Bar Association	Walter S. Brann, San Francisco, Cal.
Colorado Bar Association	Wm. H. Wadley, Denver, Colo.
State Bar Association of Connecticut	James E. Wheeler, New Haven, Conn.
Delaware State Bar Association	T. Bayard Heisel, Wilmington, Del.
Bar Association of the District of Columbia	H. Prescott Gatley, Washington, D .C.
Florida State Bar Association	Geo. C. Gibbs, Jacksonville, Fla.
Bar Association of the Hawaiian Islands	Lyle A. Dickey, Honolulu, H. I.
Idaho State Bar Association	Benjamin S. Crow, Boise, Idaho.
Illinois State Bar Association	John F. Voigt, Jr., Mattoon, Ill.
State Bar Association of Indiana	Geo. H. Bachelor, Indianapolis, Ind.
Iowa State Bar Association	Chas. M. Dutcher, Iowa City, Iowa.

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Kentucky State Bar Association.....R. A. McDowell, Louisville, Ky.

Louisiana Bar Association.....Chas. A. Duchamp, New Orleans, La.

Maine State Bar Association.....Norman L. Bassett, Augusta, Me.

Maryland State Bar Association.....J. W. Chapman, Jr., Baltimore, Md.

Massachusetts Bar Association.....Robert Homans, Boston, Mass.

Michigan State Bar Association.....William J. Landman, Grand Rapids, Mich.

Minnesota State Bar Association.....Chas. W. Farnham, St. Paul, Minn.

Mississippi State Bar Association.....Sidney Smith, Jackson, Miss.

Missouri Bar Association.....Lee Montgomery, Sedalia, Mo.

Montana Bar Association.....Chas. F. Word, Helena, Mont.

Nebraska State Bar Association.....Alfred G. Ellick, Omaha, Neb.

Bar Association of the State of New Hampshire..... Arthur H. Chase, Concord, N. H.

New Jersey State Bar Association.....Wm. J. Kraft, Camden, N. J.

New Mexico Bar Association.....Nellie C. Brewer, Albuquerque, N. M.

New York State Bar Association....Frederick E. Wadhams, Albany, N. Y.

North Carolina Bar Association.....Thos. W. Davis, Wilmington, N. C.

Bar Association of North Dakota.....W. H. Thomas, Leeds, N. D.

Ohio State Bar Association.....Edward B. McCarter, Columbus, Ohio.

Bar Association of Oklahoma.....Clinton O. Bunn,
Oklahoma City, Okla.
Oregon Bar Association.....Jerry Bronaugh,
Portland, Ore.
Pennsylvania Bar Association.....William H. Staake,
Philadelphia, Penn.
The Rhode Island Bar Association.....Howard B. Gorham,
Providence, R. I.
South Carolina Bar Association.....John J. Earle,
Columbia, S. C.
South Dakota Bar Association.....John H. Voorhees,
Sioux Falls, S. D.
Bar Association of Tennessee.....Chas. H. Smith,
Knoxville, Tenn.
Texas Bar Association.....J. B. Cave,
Austin, Texas.
State Bar Association of Utah.....Wm. D. Ritter,
Salt Lake City, Utah.
Vermont Bar Association.....John H. Mimms,
St. Albans, Vt.
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Richmond, Va.
Washington State Bar Associathion.....C. Will Shaffer,
Olympia, Wash.
West Virginia Bar Association.....Chas. McCamie,
Wheeling, W. Va.
State Bar Association of Wisconsin.....Rollin Mallory
Milwaukee, Wis.

The Association also furnishes its publications to the Library of Congress and the several State Libraries, through the Georgia State Library.

ROLL of GEORGIA BAR ASSOCIATION

1911-1912.

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Hon. Z. D. Harrison, Clerk Supreme Court.....Atlanta

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Hon. Richard B. Russell, Judge.....Atlanta
Hon. Arthur Gray Powell, Judge.....Atlanta

Hon. Logan Bleckley, Clerk Court of Appeals.....Atlanta

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Hon. W. T. Newman, Judge Northern District.....Atlanta
Hon. Emory Speer, Judge Southern District.....Macon

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Atlanta	Hon. John T. Pendleton	Atlanta
Atlanta	Hon. W. D. Ellis	Atlanta
Atlanta	Hon. Geo. L. Bell	Atlanta

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Cherokee	Hon. A. W. Fite	Cartersville
Cordele	Hon. U. V. Whipple	Cordele
Coweta	Hon. R. W. Freeman	Newnan
Eastern	Hon. Walter G. Charlton	Savannah
Flint	Hon. Robert T. Daniel	Griffin
Macon	Hon. Wm. H. Felton	Macon
Middle	Hon. B. T. Rawlings	Sandersville
Northeastern	Hon. J. B. Jones	Toccoa
Northern	Hon. David W. Meadow	Danielsville
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Rome	Hon. Jno. W. Maddox	Rome
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Tallapoosa	Hon. Price Edwards	Buchanan
Toombs	Hon. B. T. Walker	Gibson
Waycross	Hon. Thos. A. Parker	Waycross
Western	Hon. Charles H. Brand	Athens

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Albany	Hon. Daniel F. Crossland	Albany
Americus	Hon. J. A. Hixon	Americus
Ashburn	Hon. R. L. Tipton	Ashburn
Athens	Hon. Henry S. West	Athens
Atlanta	Hon. H. M. Reid	Atlanta

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Ellaville	Hon. E. J. Hart	Ellaville
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Fitzgerald	Hon. E. Wall	Fitzgerald
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Swainsboro	Hon. Henry R. Daniel.....	Swainsboro
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Sylvester	Hon. J. B. Williamson.....	Sylvester
Thomasville	Hon. W. H. Hammond.....	Thomasville
Tifton	Hon. R. Eve	Tifton
Valdosta	Hon. J. G. Cranford.....	Valdosta
Vienna	Hon. W. H. Lasseter.....	Vienna
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Wrightsville	Hon. J. L. Kent.....	Wrightsville
Zebulon	Hon. E. F. Dupree.....	Zebulon

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Adams, A. P. ..... Savannah
Adams, S. B. ..... Savannah
Adamson, W. C. ..... Carrollton
Akerman, Alexander ..... Macon
Akerman, Charles ..... Macon
Akin, Paul F. ..... Cartersville
Alexander, A. L. ..... Savannah
Alexander, Henry A. ..... Atlanta
Alexander, Irvin ..... Augusta
Alexander, Jos. A. ..... Nashville
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Alston, R. C. ..... Atlanta
Anderson, A. S. ..... Millen
Anderson, C. L. ..... Atlanta
Anderson, J. Randolph ..... Savannah
Angier, Edgar A. ..... Atlanta
Arkwright, P. S. ..... Atlanta
Arnold, Lowry ..... Atlanta
Arnold, Reuben ..... Atlanta
Arnold, R. R. ..... Atlanta
Atkinson, S. R. ..... Atlanta
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Austin, Ed. R. ..... Atlanta
Batchelor, V. A. ..... Atlanta
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Bacon, R. J. ..... Albany
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Bennet, Stanley S. ..... Quitman
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Black, J. C. C. Jr. ..... Augusta
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Born, E. W. ..... Atlanta
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Brandon, Morris ..... Atlanta
Branham, J. ..... Rome
Brantley, W. G. ..... Brunswick
Brewster, P. H. ..... Atlanta
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Brown, W. R. ..... Atlanta
Bryan, Edwin L. ..... Moultrie
Bryan, Shepard ..... Atlanta
Bunn, W. C. ..... Cedartown
Bussey, A. S. ..... Ashburn
Callaway, F. E. ..... Atlanta
Candler, Asa W. ..... Atlanta
Candler, John S. ..... Atlanta
Cann, J. F. ..... Savannah
Carson, A. A. ..... Columbus
Chappell, Ira S. ..... Dublin
Charters, W. A. ..... Gainesville
Chastain, E. S. ..... Nashville
Christian, C. A. ..... Nashvile
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Clay, Brutus J. ..... Atlanta
Clay, W. L. ..... Savanah
Cleveland, Lloyd ..... Griffin

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Daley, A. F. ..... Wrightsville
Daley, Walter R. ..... Atlanta
Dart, F. Willis ..... Douglas
Dasher, Arthur L. ..... Macon
Dasher, Benj. J. ..... Macon
Davis, Ernest M. ..... Camilla
Deal, Albert M. ..... Statesboro
Dean, J. E. ..... Rome
Dekle, Lebbeus ..... Thomasville
Denmark, E. P. S. ..... Valdosta
Denmark, R. L. ..... Savannah
Denny, R. A. ..... Rome
Dent, H. W. ..... Atlanta
Dismukes, R. E. ..... Columbus
Dixon, Jas. A. ..... Millen
Dobbs, E. O. ..... Buford
Dodd, Eugene ..... Atlanta
Donalson, Jno. E. ..... Bainbridge
Dorsey, H. M. ..... Atlanta
Douglas, E. L. ..... Atlanta
Douglas, Hamilton ..... Atlanta

Doyal, Paul H. ..... Rome
Drawdy, S. L. ..... Homerville
Duke, O. M. ..... Flovilla
Dunwoody, Harry F. ..... Brunswick
Edwards, Chas. G. ..... Savannah
Elliott, Edward S. ..... Savannah
Ellis, Geo. R. ..... Americus
Ellis, Roland ..... Macon
Ellis Robt. C. ..... Tifton
Erwin, Howell C. ..... Athens
Erwin, Marion ..... Macon
Evans, A. W. ..... Sandersville
Evans, Geo. C. ..... Sandersville
Felder, T. B., Jr. ..... Atlanta
Felder, Thos. S. ..... Macon
Fleming, W. H. ..... Augusta
Fogarty, D. G. ..... Augusta
Foster, A. G. ..... Madison
Foster, J. Z. ..... Marietta
Fuller, W. A. Jr. ..... Atlanta
Fullwood, C. W. ..... Tifton
Gamble, John B. ..... Athens
Garrard, Frank U. ..... Columbus
Garrard, Wm. ..... Savannah
Gary, W. T. ..... Augusta
Gazan, Jacob ..... Savannah
Gazan, S. N. ..... Savannah
Gilbert, J. H. ..... Atlanta
Glessner, C. L. ..... Blakely
Goetchius, H. R. ..... Columbus
Gordon, W. W. Jr. ..... Savannah
Graham, E. D. ..... McRae
Graham, Jno. M. ..... Atlanta
Green, J. Howell ..... Atlanta
Green, Thos. F. ..... Athens
Grice, Warren ..... Hawkinsville
Grice, W. L. ..... Hawkinsville
Griffin, W. H. ..... Valdosta

Gross, Marvin L. ..... Sandersville
Grogan, Geo. C. ..... Elberton
Hall, C. H. Jr. ..... Macon
Hall, H. A. ..... Newnan
Hall, J. E. ..... Macon
Hall, J. I. ..... Macon
Hamby, R. E. A. ..... Clayton
Hammond, T. A. ..... Atlanta
Hammond, W. R. ..... Atlanta
Harley, J. A. ..... Sparta
Harris, Walter A. ..... Macon
Hatcher, A. L. ..... Wrightsville
Hawkins, E. A. ..... Americus
Heath, L. E. ..... Douglas
Heyward, A. H. Jr. ..... Macon
Hill, B. H. ..... West Point
Hill, Harvey ..... Atlanta
Hill, H. W. ..... Greenville
Hill, J. J. ..... Pelham
Hill, Lamar ..... Atlanta
Hill, Thos. L. ..... Millen
Hillyer, Geo. ..... Atlanta
Hines, R. K. ..... Macon
Hitch, R. M. ..... Savannah
Hofmayer, I. J. ..... Albany
Hopkins, Jno. L. ..... Atlanta
Hopkins, L. C. ..... Atlanta
Howard, Wm. S. ..... Decatur
Howell, Albert, Jr. ..... Atlanta
Howell, W. S. ..... Greenville
Humphries, Jos. W. ..... Atlanta
Humphries, Jno. D. ..... Atlanta
Hutchins, N. L. Jr. ..... Lawrenceville
Hynds, Jno. A. ..... Atlanta
Irvin, I. T. ..... Washington
Isaac, Max ..... Brunswick
Jackson, George T. ..... Augusta

Jackson, M. M. ..... Atlanta
Johnson, Fletcher M. ..... Gainesville
Johnson, Greene F. ..... Monticello
Johnson, Henry Wiley ..... Savannah
Johnson, Walter T. ..... Macon
Jones, Geo. S. ..... Macon
Jones, J. Littleton ..... Newnan
Jones, R. O. ..... Newnan
Jones, Robt. P. ..... Atlanta
Jones, Wingfield ..... Atlanta
Kay, W. E. ..... Jacksonville, Fla.
Kennedy, L. ..... Fitzgerald
Kilpatrick, J. D. ..... Atlanta
King, A. C. ..... Atlanta
Kline, Alfred R. ..... Moultrie
Kontz, E. C. ..... Atlanta
Krauss, D. W. ..... Brunswick
Lambdin, W. W. ..... Waycross
Lane, A. W. ..... Macon
Lane, Wilfred C. ..... Valdosta
Lane, W. T. ..... Americus
Lang, H. Roy ..... Waverly
Lattimer, W. Carroll ..... Atlanta
Lawrence, A. A. ..... Savannah
Lawson, Hal ..... Abbeville
Lawson, H. F. ..... Hawkinsville
Lawson, Thos. G. ..... Eatonton
Lawton, A. R. ..... Savannah
Leaken, W. R. ..... Savannah
Lilly, O. J. ..... Dahlonega
Lipscomb, J. W. ..... Rome
Little, Jno. D. ..... Atlanta
Longley, E. S. ..... Bainbridge
Lovejoy, Hatton ..... LaGrange
Luke, Roscoe ..... Thomasville
Lumpkin, E. K. ..... Athens
Mackall, W. W. ..... Savannah

MacIntyre, W. I. ..... Thomasville
McWhorter, Marcus P. ..... Atlanta
Maddox, G. E. ..... Rome
Mallary, E. P. ..... Macon
Martin, E. W. ..... Atlanta
Martin, W. E. Jr. ..... Macon
Mathews, H. A. ..... Fort Valley
Mayson, Jas. L. ..... Atlanta
McAlpin, Henry ..... Savannah
McCowen, B. B. ..... Augusta
McDaniel, H. D. ..... Monroe
McDaniel, Sanders ..... Atlanta
McDonald, J. N. ..... Douglas
McElreath, Walter ..... Atlanta
McIntyre, F. P. ..... Savannah
McKenzie, W. H. ..... Cordele
McLaughlin, C. F. ..... Hamilton
McWhorter, H. ..... Athens
Meader, R. D. ..... Brunswick
Meldrim, Peter W. ..... Savannah
Mell, T. S. ..... Athens
Merrill, J. Hansell ..... Thomasville
Merritt, Geo. A. ..... Greensboro
Merry, H. H. ..... Pelham
Meyer, A. Alexander ..... Atlanta
Michael, Max ..... Athens
Miller, A. L. ..... Macon
Miller, B. S. ..... Columbus
Miller, W. K. ..... Augusta
Minis, A. ..... Savannah
Mitchell, E. M. ..... Atlanta
Mitchell, Fondren ..... Thomasville
Moon, E. T. ..... LaGrange
Moore, Hudson ..... Atlanta
Moore, R. Lee ..... Statesboro
Morris, Sylvanus ..... Athens
Murrow, J. B. ..... Tifton
Myrick, Shelby ..... Savannah

Napier, Geo. M. ..... Atlanta
Neel, J. M. ..... Cartersville
Nelson, L. W. ..... Albany
Newell, Jno. O. ..... Carrollton
Norman, R. C. ..... Washington
Norris, Jno. T. ..... Cartersville
O'Byrne, M. A. ..... Savannah
Oliver, F. M. ..... Savannah
O'Neal, M. E. ..... Bainbridge
Orme, A. J. ..... Atlanta
Owens, Geo. W. ..... Savannah
Palmer, Geo. C. ..... Columbus
Palmer, H. E. W. ..... Atlanta
Park, Orville A. ..... Macon
Park, Walter G. ..... Blakely
Parks, Benj. G. ..... Waycross
Pate, A. C. ..... Hawkinsville
Patterson, Geo. L. ..... Valdosta
Patty, H. M. ..... Atlanta
Paulk, Drew W. ..... Fitzgerald
Payne, J. C. ..... Atlanta
Payton, Claude ..... Sylvester
Peacock, H. A. ..... Camilla
Pearson, Perry S. ..... Atlanta
Peeples, H. C. ..... Atlanta
Perry, H. H. ..... Gainesville
Perry, Jas. A. ..... Lawrenceville
Persons, A. P. ..... Talbotton
Pettigrew, C. L. ..... Atlanta
Phillips, Ben Z. ..... Atlanta
Phillips, W. L. ..... Louisville
Pierce, Benjamin E. ..... Augusta
Pope, Jno. D. ..... Albany
Porter, J. H. ..... Atlanta
Pottle, Jos. E. ..... Milledgeville
Pottle, J. R. ..... Blakely
Powers, W. R. ..... Marietta
Propper, Albert H. ..... Savannah

Quincy, J. W. ..... Douglas
Randolph, H. N. ..... Atlanta
Ransom, Ronald ..... Atlanta
Reed, Harry D. ..... Waycross
Reese, Millard ..... Brunswick
Reid, C. S. ..... Palmetto
Roddenberry, S. A. ..... Thomasville
Rogers, Jas. M. ..... Savannah
Rogers, Z. B. ..... Elberton
Rosser, L. Z. ..... Atlanta
Rourke, Jno. R. ..... Savannah
Rucker, Lamar ..... Athens
Russell, A. H. ..... Bainbridge
Sage, Herbert A. ..... Atlanta
Saussy, Fred T. ..... Savannah
Schley, Jno. S. ..... Savannah
Scott, Hugh M. ..... Atlanta
Scruggs, W. L. ..... Atlanta
Shackelford, F. C. ..... Athens
Shackelford, T. J. ..... Athens
Shattuck, Jas. P. ..... LaFayette
Shearouse, Paul D. ..... Fitzgerald
Sibley, S. H. ..... Union Point
Skelton, J. H. ..... Hartwell
Slade, Lester C. ..... Columbus
Slaton, Jno. M. ..... Atlanta
Slicer, J. S. ..... Atlanta
Smith, Alex. W. ..... Atlanta
Smith, Alex. W. Jr. ..... Atlanta
Smith, Burton ..... Atlanta
Smith, C. L. ..... Valdosta
Smith, Hoke ..... Atlanta
Smith, J. R. L. ..... Macon
Smith, Marion ..... Atlanta
Smith, O. M. ..... Valdosta
Smith, Victor ..... Atlanta
Snodgrass, W. C. ..... Thomasville
Snow, Russell ..... Quitman

Spence, A. B. ..... Waycross
Steed, W. E. ..... Butler
Stephens, Alex. W. ..... Atlanta
Stephens, Wm. B. ..... Savannah
Stevens, Geo. W. ..... Atlanta
Stevenson, W. A. ..... Commerce
Strickland, J. J. ..... Athens
Sweat, J. L. ..... Waycross
Swift, H. H. ..... Columbus
Talley, J. N. ..... Macon
Terrell, J. M. ..... Atlanta
Terrell, J. R. ..... Greenville
Thomas, Jno. M. ..... Savannah
Thomas, L. W. ..... Atlanta
Thompson, A. H. ..... LaGrange
Thompson, W. A. ..... Macon
Thompson, W. D. ..... Atlanta
Tipton, J. H. ..... Sylvester
Titus, Theo. ..... Thomasville
Toomer, W. M. ..... Jacksonville, Fla.
Trawick, Wm. H. ..... Cedartown
Turner, S. M. ..... Quitman
Turnipseed, Ben M. ..... Fort Gaines
Tye, Jno. L. ..... Atlanta
Underwood, E. M. ..... Atlanta
Upson, F. L. ..... Athens
Upson, S. C. ..... Athens
Wade, P. L. ..... Dublin
Walker, Clifford M. ..... Monroe
Walker, John S. ..... Waycross
Wall, Jos. B. ..... Fitzgerald
Walsh, Thos. F. Jr. ..... Savannah
Watkins, Edgar ..... Atlanta
West, T. B. ..... Macon
Westbrook, Cruger ..... Albany
Westmoreland, Geo. ..... Atlanta
Westmoreland, T. P. ..... Atlanta

Wilcox, E. K. ..... Valdosta
Wilkes, J. A. ..... Moultrie
Williams, J. R. ..... Griffin
Williams, J. S. ..... Waycross
Williams, E. T. ..... Atlanta
Willingham, Wright ..... Rome
Wilson, H. E. ..... Savannah
Wilson, L. A. ..... Waycross
Wimberly, Minter ..... Macon
Wimbish, W. A. ..... Atlanta
Woodward, A. T. ..... Valdosta
Worrill, Claude ..... Thomaston
Worsley, Wm. deL. ..... Columbus
Wright, Anton ..... Savannah
Wright, Barry ..... Rome
Wright, Jas. T. ..... Atlanta
Yeomans, M. J. ..... Dawson
Zahner, Robert ..... Atlanta

Addresses Delivered and Papers Read Before The Georgia Bar Association

In order to make easily available a list of the great number of splendid addresses and papers which have been presented from year to year since the organization of the Association, the following table has been prepared by Harry S. Strozier, Esq., of Macon, at the request of the Secretary. Few even of the members of the Association realize what a wealth of legal learning is contained in the Reports. It is believed that this table will prove of great assistance and render the Reports increasingly valuable.—SECRETARY.

Addresses By The Presidents

YEAR.	NAME.	SUBJECT.
1885.	WILLIAM M. REESE	The Constitutions of Georgia.
1886.	JOSEPH. B. CUMMING	Lawyers, the Trustees of Public Opinion.
1887.	CLIFFORD ANDERSON	The Achievements of Lawyers.
1888.	WALTER B. HILL	Bar Associations.
1889.	MARSHALL J. CLARKE	A Study of the Judicial Character.
1890.	GEORGE A. MERCER	The Philosophy of Legal Biography.
1891.	FRANK H. MILLER	The Young Practitioners at the Georgia Bar.
1892.	JOHN PEABODY	Verdicts of Juries and New Trials.
1893.	WASHINGTON DESSAU	Trial by Jury.
1894.	LOGAN E. BLECKLEY	Causation (Poem).
1895.	WM. H. FLEMING	The Ethics of the Bar in Relation to the State.
1896.	JOHN W. PARK	Historical Sketch of Georgia as a Litigant in the Supreme Court of the United States.
1897.	HENRY R. GOETCHIUS	Litigation in Georgia During the Reconstruction Period.
1898.	JOHN W. AKIN	Aggressions of the Federal Courts.
1899.	HAMILTON MCWHORTER	The Law, Its Courts and Ministers.
1900.	JOSEPH R. LAMAR	A Century's Progress in Law.
1901.	H. WARNER HILL	Historic Landmarks of the Law.
1902.	CHARLTON E. BATTLE	The Georgia-Tennessee Boundary Dispute.
1903.	BURTON SMITH	Trusts and Monopolies.
1904.	P. W. MELDRIM	Respect for the Law.
1905.	A. P. PERSONS	Some Kaleidoscopic Generalities.
1906.	T. A. HAMMOND	Is There a Growing Disposition or Tendency to Disregard or Evade the Law?
1907.	A. L. MILLER	Some Friendly Suggestions to Young Lawyers.
1908.	SAMUEL B. ADAMS	Lawlessness.
1909.	JOSEPH HANSELL MERRILL	The Condition of our Courts and Their Standing with the Public; the Cause and Remedy.
1910.	T. M. CUNNINGHAM, JR.	Problems of the Hour.
1911.	JOEL BRANHAM	Brevity and Reform.

Annual Addresses

YEAR.	NAME.	SUBJECT.
1884.	ALEXANDER R. LAWTON	The Character and Mission of the Lawyer.
1887.	THOS. M. COOLEY	The Uncertainty of the Law.
1888.	SEYMOUR D. THOMPSON	More Justice and Less Technicality.
1895.	WILLIAM B. HORNBLOWER	The Past, Present, and Future of our Constitutional System.
1897.	SIMEON E. BALDWIN	Absolute Power, An American Institution.
1899.	WILLIAM L. WILSON	The Increasing Difficulties of American Democratic Government.
1900.	CHARLES NOBLE GREGORY	American Lawyers and Their Making.
1901.	LUCIUS Q. C. LAMAR	The Development and Present Status of the Law in Cuba.
1902.	HORACE H. LURTON	The Evolution of the American Law of Constitutional Limitations.
1903.	ALTON B. PARKER	Due Process of Law.
1905.	J. C. MCREYNOLDS	Somewhat Concerning Aliens.
1906.	WM. TRAVERS JEROME	Public Opinion, Its Power, Some of Its Evils, and Injustices, and Our Duty As Lawyers to It.
1907.	CHAMP CLARK	The Country Lawyer as a Factor in Public Affairs.
1908.	J. H. LUMPKIN	Substance and Shadow in the Law.
1909.	HANNIS TAYLOR	Pelatiah Webster, the Architect of the Federal Constitution.
1910.	WM. M. IVINS	Judicial Economic Theory and the Duty of the Bar.
1911.	W. A. BLOUNT	The Passing of Individual Rights of Property.

Addresses and Papers

YEAR.	NAME.	SUBJECT.
1884.	CHARLES C. JONES	Compensation of the Judiciary.
1884.	JOHN W. PARK	The British Constitution.
1884.	L. F. GARRARD	*Habeas Corpus.*
1885.	JOHN T. CLARKE	Appellate Courts.
1885.	SAMUEL HALL	The Jury System.
1885.	ALEXANDER C. KING	A Sketch of the History of Land Titles in Georgia.
1886.	POPE BARROW	The Federal Judiciary.
1886.	LOGAN E. BLECKLEY	Truth at the Bar.
1886.	GEORGE A. MERCER	Receiverships of Corporations.
1886.	A. MINIS, JR.	The Relation of Attorney and Client.
1886.	WALTER B. HILL (Ch'mn. Special Committee.)	Delays in the Administration of Justice.

YEAR.	NAME.	SUBJECT.
1887.	JOHN W. AKIN	The Circuit Judge.
1887.	I. E. SHUMATE	Professional Responsibility.
1887.	R. S. LANIER	Usury as Affecting Securities for Debt.
1887.	H. E. W. PALMER	The Evidence Act of 1866.
1888.	WALTER GREGORY	The Funny Side of the Law.
1888.	THOS. J. CHAPPELL	Open Questions.
1888.	A. H. DAVIS	On Sealed Instruments.
1888.	CLEM P. STEED A. MINIS, JR.	Should the Law Regarding Improvements in Ejectment be Modified; if so, How?
1889.	WALTER B. HILL (Chairman Committee on Federal Legislation.)	The Federal Judicial System.
1889.	LOGAN E. BLECKLEY	Law as a Rule of Feeling.
1890.	CLAUD ESTES	Excessive Legislation a Cause of Judicial Inefficiency and an Element of Political Weakness.
1890.	FRANCIS D. PEABODY	The Unanimity Rule in Making Verdicts.
1890.	FRANK H. MILLER	Dissolution of Corporations by Repeal and Forfeiture.
1890.	RICHARD H. CLARK	History of the First Georgia Code.
1891.	E. W. MARTIN	The Perfection of Right, which is Justice, the Ideal Law.
1891.	H. A. MATHEWS	The Property Rights of Married Women: Is Additional Legislation Needed?
1891.	J. M. MOBLEY	Law Reform and Changes.
1892.	LOGAN E. BLECKLEY	Emotional Justice.
1892.	J. R. LAMAR	Georgia's Contribution to Law Reform.
1892.	A. H. DAVIS	Declarations As Part of *Res Gestae*.
1892.	B. F. ABBOTT	Bankrupt Laws.
1892.	J. H. MARTIN	Ejectment Pleading and Practice.
1893.	CHARLES H. SMITH (Bill Arp.)	Some Recollections of Law and Lawyers of Other Days.
1893.	LIONEL C. LEVY	The Nicaragua Canal: Constitutionality of its Financial Aid and Control by the United States Government.
1893.	A. H. MACDONELL	Discretion in Punishment.
1893.	LOGAN E. BLECKLEY	The Future of Woman at the Georgia Bar.
1893.	H. R. GOETCHIUS	The Attestation of Deeds.
1893.	W. M. REESE J. J. STRICKLAND H. W. HILL W. H. FLEMING I. E. SHUMATE	How Should the Judiciary be Chosen, and Why?
1893.	A. C. KING	What Reforms Are Most Needed in Remedial Procedure in Georgia?

YEAR.	NAME.	SUBJECT.
1894.	W. T. TURNBULL, J. L. SWEAT, B. B. BOWER	Our Judicial System—Is it Defective? If so, Wherein?
1894.	WILLIAM C. GLENN	The Practical Uses of the Roman Law.
1894.	A. J. CROVATT, L. Z. ROSSER, R. R. ARNOLD	Qualifications for Admission to the Bar.
1894.	F. D. PEABODY, N. J. HAMMOND, F. H. MILLER	The Insolvent Traders' Receivership Act.
1894.	BURTON SMITH, A. H. DAVIS	Woman at the Georgia Bar.
1895.	ALEX. C. KING	The *Ultra Vires* Acts of Corporations.
1895.	JOHN W. AKIN	The Poet Bleckley.
1895.	WASHINGTON DESSAU	A Comparative View of State Constitutions.
1895.	W. W. GORDON, JR., J. HANSELL MERRILL	Relief of the Supreme Court of Georgia: Is the Remedy One or More Intermediate Courts?
1895.	H. H. PERRY	A Dual Organization.
1895.	J. H. BLOUNT, JR.	Three Great Codifiers.
1895.	W. A. WIMBISH	Literary Property.
1896.	N. J. HAMMOND	Georgia Driftwood.
1896.	F. D. PEABODY	The Selection of the Judiciary.
1896.	HENRY R. GOETCHIUS	The Lynch Law Tree. (Extracts from the Green Bag.)
1896.	WALTER B. HILL (Chairman Committee.)	Legal Ethics.
1896.	ALBERT H. RUSSELL	Supreme Court Practice; Defects and Remedies.
1897.	LOGAN E. BLECKLEY	The Judge as a Factor in Trials of Fact.
1897.	CHARLES J. SWIFT	Practical and Legal Aspects of Hawaiian Annexation.
1897.	H. T. LEWIS, LEWIS W. THOMAS, JOHN C. MCDONALD, G. P. MUNRO, BURTON SMITH	Is Lynch Law Due to Defects in the Criminal Law, or its Administration?
1897.	W. C. GLENN	The Reform of Criminal Procedure.
1897.	C. C. SMITH	Interesting Professional Experiences.
1897.	J. CARROLL PAYNE	A Celebrated Case—The Myra Clark Gaines Litigation.
1897.	JAS. BISHOP, JR.	How Should Our Circuit Judges be Chosen?
1897.	C. J. THORNTON	Wit and Humor of the Georgia Bar.
1897.	WM. M. REESE	Reminiscences.
1898.	ORVILLE A. PARK	The Dumb Act of 1850.

1898.	F. P. LONGLEY	Proposed Amendment to the Constitution Providing for the Election of Judges and Solicitors by the People.
1898.	JOSEPH R. LAMAR	Georgia Law Books.
1898.	CHARLES L. BASS	Wit and Humor of the Bar of the Georgia Mountains.
1898.	WILLIAM K. MILLER	Limitations of the Dartmouth College Case.
1898.	J. HANSELL MERRILL	Restriction of Elective Franchise.
1898.	H. W. HILL E. H. MYERS	The Advisability of Decreasing Jury Exemptions.
1898.	ALBERT H. RUSSELL	Wit and Wisdom of Chief Justice L. E. Bleckley in the Georgia Reports.
1898.	C. P. GOODYEAR WM. P. HILL ALEX. C. KING GEORGE M. NAPIER	Should the Constitution of this State be Amended so as to Allow Municipal Corporations to Exempt New Factories from Taxation for a Term of Years?
1899.	JOHN L. HOPKINS	The Evolution of the Code.
1899.	JAMES B. BAIRD	The Medical Witness—His Rights and His Wrongs in Courts of Justice.
1899.	S. P. GILBERT	The Growth of Criminal Law.
1899.	LOGAN E. BLECKLEY	The Law and the Irrelevant.
1899.	WASHINGTON DESSAU	Admission to the Bar in Georgia.
1899.	ORVILLE A. PARK	What the Others Are Doing. A Review of the Current Reports of the Bar Associations of the United States.
1899.	JOHN J. STRICKLAND	Are the Courts Responsible for Lynchings, and if so, Why?
1899.	J. F. DELACY	The Necessity of Reforms in the Criminal Law.
1899.	EDWARD THOMPSON	The Relation of Religion to Our Government.
1899.	SPENCER R. ATKINSON	Shall the Public Justice be Judicially Administered?
1900.	F. D. PEABODY J. B. BURNSIDE FRANK HARWELL CLEM P. STEED	The Dumb Act of 1850.
1900.	ALEXANDER R. LAWTON	Some Characteristics of Military Law.
1900.	MARCUS W. BECK	Juries and Jury Trials.
1900.	WALTER B. HILL	The Biological Law of Infancy.
1900.	WILLIAM WIRT HOWE	The Law of Primitive People.
1900.	LOGAN E. BLECKLEY	Human Seniority.
1900.	PAUL F. AKIN	Municipal Ownership of Light, Water, and Transportation Systems.
1901.	REUBEN R. ARNOLD	Delays and Technicalities in the Administration of Justice.

YEAR.	NAME.	SUBJECT.
1901.	J. C. C. BLACK	Law and Lawyers.
1901.	W. A. WIMBISH	The Ancillary Jurisdiction of Federal Courts of Equity.
1901.	J. HANSELL MERRILL	The Bible in the Lawyer's Library.
1901.	ROLAND ELLIS	The Criticism of Courts.
1901.	SHEPARD BRYAN	Defects in the Law of Georgia Regulating Private Corporations.
1901.	C. A. TURNER	The Six Characters in the Trial of Causes.
1901.	MRS. J. RENDER TERRELL	The Georgia Lawyer as Viewed by a Woman.
1901.	WILLIAM L. SCRUGGS	Evolution of American Citizenship.
1901.	SYLVANUS MORRIS	Pleading.
1901.	WALTER G. CHARLTON	A Lawyerless Court.
1901.	A. P. PERSONS	Public Opinion of the Law and of Lawyers.
1901.	ALBERT H. RUSSELL, E. T. MOON, A. W. EVANS, W. W. BACON, JR., A. H. THOMPSON	Defects in Justice Court Practice.
1901.	IRVIN ALEXANDER	The Correction of Errors in Justice Courts.
1902.	WALTER B. HILL	The History, Objects, and Achievements of the Georgia Bar Association.
1902.	ORVILLE A. PARK	The State Bar Associations in 1901.
1902.	ANDREW J. COBB, WILLIAM K. MILLER	The Judicial System of Georgia: Its Defects; What Changes Are Necessary to Bring About a More Harmonious and Orderly System and to Relieve the Supreme Court.
1902.	ROBERT C. ALSTON	The Effect Which United States Courts Will Give to the Decisions of State Courts.
1903.	WASHINGTON DESSAU (Chairman Committee.)	The Torrens System for the Registration of Land Titles.
1903.	RICHARD D. MEADER	Sunday as Viewed by American Law.
1903.	P. W. MELDRIM	Cicero.
1903.	ORVILLE A. PARK	The State Bar Associations in 1901-1902.
1903.	ARTHUR GRAY POWELL	The Constitutionality, Operation, and Effect of Laws Taxing Franchises and Especially the Georgia Franchise Tax Act.
1903.	LOUIS F. GARRARD	The Evolution of the Fourteenth Amendment.
1903.	GEORGE F. GOBER	Trial by Jury.
1903.	JAMES BISHOP, JR.	Government by Injunction.

YEAR.	NAME.	SUBJECT.
1903.	CHARLES JEWETT SWIFT	Jefferson and the Contributions of His Masterly Genius to the Genesis and Growth of American Constitutional History.
1904.	J. H. LUMPKIN	Problems and Progress.
1904.	T. M. CUNNINGHAM, JR.	Admiralty Law in the United States.
1904.	SHEPARD BRYAN	The Rule of Equality in Taxation.
1904.	EUGENE RAY	Young Lawyers and Some of the Obstacles they Encounter.
1904.	W. R. HAMMOND	The Mission of the Lawyer.
1904.	BARRY WRIGHT THOS F. CORRIGAN	What Further Restrictions on the Elective Franchise, if Any, Are Desirable in Georgia?
1905.	LOGAN E. BLECKLEY	Some Revised Thoughts of An Old Man—An Old Lawyer.
1905.	EUGENE RAY	A Justice of the Peace—A Justice Court—A Justice Court Lawyer—A Justice Court Law.
1906.	JOHN L. HOPKINS	The Lawyer in Government.
1906.	H. M. PATTY	What Preventive Legislation is Necessary with Reference to Divorce?
1906.	EMORY SPEER	The Initiative of the President.
1906.	ALEXANDER AKERMAN	The Power of Municipal Courts.
1906.	ALEXANDER W. SMITH	Should the Bankruptcy Law be Repealed?
1906.	WILLIAM W. GORDON, JR.	Defects in Our Criminal Procedure and the Remedies Therefor.
1906.	W. L. SCRUGGS	Evolution of the Fourteenth and Fifteenth Amendments.
1906.	JAMES H. BLOUNT	Some Legal Aspects of the Philippines.
1906.	CHARLES R. WILLIAMS	The Legal Status of the Panama Canal Zone.
1906.	LOGAN E. BLECKLEY	Value as Quality.
1906.	JAMES H. GILBERT	Federal Control of Life Insurance.
1906.	SHEPARD BRYAN	The Corporation as Defendant in Criminal Prosecutions.
1906.	W. A. WIMBISH	Judicial Review of the Rates of Carriers.
1906.	J. CARROLL PAYNE	*Magna Carta*, in its True Light and in its Actual Relation to the Liberties of the English People.
1907.	JOSEPH R. LAMAR	History of the Establishment of the Supreme Court of Georgia.
1907.	HENRY MCALPIN	The Court of Ordinary.
1907.	HENRY A. ALEXANDER	Defects in the Georgia Laws Relating to Liens of Mechanics and Materialmen.
1907.	W. C. BUNN	The Development of the Law in Georgia with Regard to Child Labor in Factories.

YEAR.	NAME.	SUBJECT.
1908.	ANDREW J. COBB ALEX. W. SMITH	How Far Should Public Utility Corporations be Controlled, and by What Means?
1908.	T. M. CUNNINGHAM, JR. SAMUEL H. SIBLEY L. W. BRANCH	The Use of Injunctions by Federal Courts as to State Laws.
1908.	WRIGHT WILLINGHAM	Labor Unions and Kindred Organizations from the Lawyer's Standpoint.
1909.	W. L. GRICE	Recollections of the Supreme Court of Georgia.
1909.	HAMILTON DOUGLAS GEO. S. JONES	The Guaranteeing of Bank Deposits by the State and Federal Governments.
1909.	WALTER A. HARRIS	The Legal Aspects of the Recent Amendment to the Constitution of Georgia Regulating the Elective Franchise.
1909.	WM. H. FLEMING	The Treaty-Making Power of the President and Senate: How Affected by the Powers Delegated to Congress, and by the Powers Reserved to the States.
1909.	GEORGE W. OWENS JOHN T. NORRIS JOHN D. POPE HEWLETT A. HALL	What is the Best Method for Selecting Judges and Solicitors-General?
1909.	JOEL BRANHAM	Some References to Our Laws Prior to the War Between the States.
1910.	SAMUEL H. SIBLEY SAMUEL B. ADAMS	Appellate Courts, Their Number, Constitution, and Jurisdiction.
1910.	HENRY C. HAMMOND I. J. HOFMAYER	Superior Courts of Original Jurisdiction, Their Number, Constitution, and Jurisdiction.
1910.	J. R. POTTLE A. A. LAWRENCE	Procedure in the Courts of Original Jurisdiction.
1910.	WALTER MCELREATH MAX MICHAEL	Justice Courts, Their Number, Constitution, and Jurisdiction.
1910.	GEORGE HILLYER	Procedure in Criminal Cases.
1910.	ALEX. C. KING	Lawlessness, Form and Reform.
1911.	DUPONT GUERRY	The Three Judiciaries.
1911.	A. F. DALEY F. WILLIS DART	Superior Courts of Original Jurisdiction, Their Number, Constitution and Jurisdiction.
1911.	ROBERT M. HITCH W. C. BUNN W. K. MILLER	Procedure in Courts of Original Jurisdiction.

YEAR.	NAME.	SUBJECT.
1911.	J. S. SLICER	Justice Courts; Their Constitution, Jurisdiction, and the Procedure Therein.
1911.	A. W. EVANS	Procedure in Criminal Cases.
1911.	J. CARROLL PAYNE	A Celebrated Case—The Myra Clark Gaines Litigation.
1911.	J. C. C. BLACK	Rufus Choate's Speech Against Popular Election of Judges.

Memorials

1886	L. N. Whittle.
1887	Wm. E. Collier.
1888	Samuel Hall.
1890	Thomas R. R. Cobb.
1891	James M. Smith.
1891	W. S. Chisholm.
1891	John McPherson Berrien.
1891	John T. Clarke.
1894	L. Q. C. Lamar.
1894	John S. Davidson.
1894	B. P. Hollis.
1894	A. Pratt Adams.
1894	John Peabody.
1894	James T. Nisbet.
1894	Richard F. Lyon.
1894	Robert S. Lanier.
1894	Charles C. Jones, Jr.
1897	Hiram Warner.
1897	Edwin A. Cohen.
1897	Morgan McMichael.
1897	Aurelian F. Cooledge.
1897	A. R. Lawton.
1898	Archibald T. McIntyre.
1899	Richard H. Clark.
1899	John D. Berry.
1899	Marshall J. Clarke.
1899	Thomas R. R. Cobb.
1899	A. S. Giles.
1899	John T. Glenn.
1899	Nathaniel J. Hammond.
1899	Thomas W. Latham.
1899	Wm. M. Reese.
1899	E. A. Smith.
1899	U. P. Wade
1899	James Whitehead.
1899	Robert Whitfield.
1900	Clifford Anderson.
1900	W. Y. Atkinson.
1900	Carey J. Thornton.
1900	S. N. Woodward.
1901	Brantley A. Denmark.

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Disposition of Matters By The Association

Transfer of the name of Justice Joseph R. Lamar to list of honorary membership ordered to be made. See pages 7 and 10.

Resolution adopted providing for appointment of Permanent Commission on the Revision of the Judicial System and Procedure in the Courts. See pages 26-32, 35, 222.

Committee on securing increase in judges' salaries continued, and Judge John C. Hart added to the Committee. See pages 32-35.

Resolution adopted requesting Governor to submit to General Assembly the advisability of creating a Commission looking to reform and revision of our laws of procedure. See pages 35, 36.

Resolution as to abolition of city courts referred to Permanent Commission on Revision of Judicial System. See pages 22, 36-41.

Requests by Association that paper prepared by Judge W. R. Hammond be read at the next annual session. See page 41.